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1984 PROTOCOLS AMENDING THE CIVIL LIABILITY AND FUND CONVENTIONS ON OIL POLLUTION DAMAGE

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

TWO PROTOCOLS: (A) THE PROTOCOL OF 1984 TO AMEND THE INTERNATIONAL CONVENTION ON CIVIL LIABILITY FOR OIL POLLUTION DAMAGE, 1969 (CIVIL LIABILITY CONVENTION); AND (B) THE PROTOCOL OF 1984 TO AMEND THE INTERNATIONAL CONVENTION ON THE ESTABLISHMENT OF AN INTERNATIONAL FUND FOR COMPENSATION FOR OIL POLLUTION DAMAGE, 1971 (FUND CONVENTION)

NOVEMBER 6, 1985.—Protocols were read the first time, and together with the accompanying papers, referred to the Committee on Foreign Relations and ordered to be printed for use of the Senate

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LETTER OF TRANSMITTAL

THE WHITE HOUSE, *November 5, 1985.*

To the Senate of the United States:

I transmit herewith, for the advice and consent of the Senate to ratification, the Protocol of 1984 to Amend the International Convention on Civil Liability for Oil Pollution Damage, 1969 (Civil Liability Convention) and the Protocol of 1984 to Amend the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971 (Fund Convention). The Department of State has prepared a Technical Report on the Protocols, which is attached for the information of the Senate.

The 1984 Protocols to the Civil Liability and Fund Conventions are intended to revise and update the international system of liability and compensation for damage caused by vessel source oil pollution. In light of worldwide experience with costly oil spills since the conventions were first negotiated, they both required substantial amendment to raise their liability and compensation limits. The maximum liability and compensation limits contained in the new Protocols are approximately four times higher than in the original conventions and are now deemed sufficient to compensate all legitimate claimants with regard to any oil spill likely to occur in waters off the coasts of the United States. These new limits would provide substantially greater levels of compensation for United States citizens who sustain oil pollution damage than is currently available under existing domestic statutes or voluntary industry mechanisms.

A United States understanding of the term "pollution damage" and declarations by which the United States would exercise the option under the Protocols to delay the effective date of our instruments of ratification, are included in the Technical Report of the Department of State for consideration of the Senate. If approved, these declarations and understanding would be appended to the United States instruments of ratification.

Expeditious ratification of the 1984 Protocols would demonstrate not only our interest in assuring compensation for United States citizens who sustain oil pollution damage, but also our commitment to higher, uniform international standards for mitigating such damage which can be generally accepted worldwide.

I recommend that the Senate give early and favorable consideration to the 1984 Protocols to the Civil Liability and Fund Conventions and give its advice and consent to ratification.

RONALD REAGAN.

LETTER OF SUBMITTAL

S/S-8529448
DEPARTMENT OF STATE,
Washington, October 7, 1985.

The PRESIDENT,
The White House.

THE PRESIDENT: I have the honor to submit to you, with a view to transmittal to the Senate for its advice and consent to ratification, the Protocol of 1984 to Amend the International Convention on Civil Liability for Oil Pollution Damage, 1969 (Civil Liability Convention) and the Protocol of 1984 to Amend the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971 (Fund Convention).

The Civil Liability and Fund Conventions, as amended by the 1984 Protocols, contain several important benefits for the United States. First, the regime they establish creates a clear, internationally recognized standard of liability and compensation. The total per incident compensation for clean-up costs and damages available under the Protocols is substantially higher than that currently available under existing U.S. domestic Federal and State statutes. Second, the shipowner's liability is guaranteed by an internationally enforced compulsory insurance scheme. Thus, the United States would be assured that most ships posing a pollution threat to the U.S. territorial seas or exclusive economic zone would be financially able to cover their potential liability. Third, jurisdiction over foreign shipowners for spills causing damage in the United States is clearly established in U.S. courts. Such jurisdiction could be extremely difficult to establish in the absence of the Protocols. Fourth, a judgment against a foreign shipowner rendered in a United States court must, with very limited exceptions, be recognized in courts of other countries which are Parties to the Protocols. Since the statutes of foreign countries do not provide for automatic enforcement of judgments rendered in United States courts, this provision in the Protocols adds a much greater certainty of recovery for U.S. victims of oil pollution. Finally, if a United States judgment exceeded the liability of the shipowner, the victims would have a right to compensation from the International Fund.

The Protocols amend the Civil Liability and Fund Conventions which together establish a system of liability and compensation for damage caused by marine oil pollution. The Civil Liability Convention establishes shipowner liability for oil pollution damages and clean-up costs, subject to certain limited exceptions, at a rate of 133 International Monetary Fund Special Drawing Rights (SDRs) per ton, to a maximum of 14 million SDRs (Currently 1 SDR=approximately $1.00 but the dollar value fluctuates with ex-

change rates). The Fund Convention establishes an International Fund which provides compensation above that provided by the shipowner under the Civil Liability Convention, up to a total per incident level of 45 million SDRs. The Fund also compensates claimants, with limited exceptions, in cases where a shipowner is incapable of meeting his financial responsibility or has a defense against liability under the Civil Liability Convention. The Fund is financed by contributions from persons in Contracting States who receive more than 150,000 metric tons of seaborne "contributing oil" (crude and heavy fuel oils) per year.

The United States has not ratified either the Civil Liability Convention or the Fund Convention due largely to Congressional concerns that their combined coverage is too low to afford adequate protection for claims likely to arise from catastrophic oil spills such as the 1978 Amoco Cadiz incident off the coast of France. Therefore, a primary objective in developing the Protocols was to remedy this shortfall. The Protocols provide substantially higher shipowner liability limits and an increased, two-step Fund compensation limit which should assure adequate compensation for all legitimate claimants with regard to any oil spill likely to occur in U.S. waters.

The 1984 Protocol to the Civil Liability Convention establishes a 3 million SDR liability limit for all ships under 5000 tons. For ships over 5000 tons, shipowner liability will be increased by an additional 420 SDRs per ton to a maximum of 59.7 million SDRs. Under the 1984 Protocol to the Fund Convention, the maximum compensation payable for a single incident will be either 200 million or 135 million SDRs. The maximum will be 200 million SDRs when three countries whose annual contributing oil receipts equal or exceed 600 million tons are Parties; in effect, this means when the U.S. and two other large contributors become members of the Fund. If the total of the annual contributing oil receipts of the three largest contributing Parties is less than 600 million tons, the maximum will be 135 million SDRs.

While the Protocols to the Civil Liability and Fund Conventions substantially increase the amount of total per incident compensation available to victims of marine oil pollution damage the increased financial burden is equitably shared among the Parties. We believe the changes effected by the Protocols also ensure an equitable allocation of the compensation burden between vessel owners and the cargo interests who contribute to the Fund.

The 1984 Protocols contain several other important amendments to the Civil Liability and Fund Conventions. They provide for a simplified and more expeditious procedure to facilitate changes in the liability and compensation limits necessitated by inflation.

They refine the definition of compensable damage to exclude speculative claims while permitting claims for reasonable expenses to restore the marine environment. Finally, they extend the coverage of the Conventions in several significant respects: in geographic application, to include the 200 nautical mile exclusive economic zone; in compensable items of damage, to include preventive measures, wherever taken, even before discharge; and in ships to which they apply, to include unladen ships being operated in ballast.

The Departments of Transportation and State coordinated with interested agencies of the Federal Government in negotiating the

Protocols to the Civil Liability and Fund Conventions. In addition, close liaison was maintained with Congress and affected interest groups prior to and during the negotiating process. Members of these groups served on the United States delegation to the Diplomatic Conference which adopted the Protocols. The concerned agencies in the Executive Branch support early ratification of the 1984 Protocols to the Civil Liability and Fund Conventions, although we are aware that certain segments of the oil industry prefer a system which would allocate the compensation burden between vessel owners and cargo interests who contribute to the Fund differently.

The United States signed these Protocols on February 12 of this year, thereby becoming the second government to do so (the first government was the United Kingdom which is the host government to the International Maritime Organization, the depositary for the Protocols). The United States thus continued the leadership on the subject which it undertook during the negotiation of the Protocols at the 1984 Diplomatic Conference. Early ratification of these Protocols by the United States is expected to precipitate like action on the part of other governments, and to enhance the United States' leadership role in international maritime matters generally. As of October 1, 1985, the following States have signed the Protocols: United Kingdom, United States, Sweden, Poland, Portugal, Federal Republic of Germany, Morocco, France and Denmark.

Comprehensive oil pollution liability and compensation legislation which, in part, would provide the necessary statutory basis to implement the two Protocols when they enter into force for the United States was passed by the House of Representatives last year and has been reintroduced in the 99th Congress. Secretary of Transportation, Elizabeth Dole, in testimony before the House Subcommittee on Coast Guard and Navigation in June 1984, expressed the strong support of the Administration for the Protocols as an integral part of this legislation. On June 18, 1985, she reaffirmed the Administration's support in a letter to the chairman of that subcommittee. The legislation has now been reported by the Merchant Marine and Fisheries Committee and is pending before the Public Works and Transportation Committee.

In addition to the texts of the Protocols, I include, for the information of the Senate, a Technical Report of the Department of State on the negotiation and the provisions of the Protocols. I have also included for reference a copy of the Final Act of the International Conference on Liability and Compensation for Damage in Connection with the Carriage of Certain Substances by Sea, 1984, which adopted the Protocols.

The Technical Report on the Department of State contains a recommended declaration by which the U.S. would exercise the option under the Protocols to delay the effective date of its instruments of ratification until a sufficient number of States representing a sufficient amount of contributing oil have ratified the Protocol to the Fund Convention so that U.S. oil receivers would not bear an inordinate contribution burden under that Protocol. The report also contains a recommended understanding respecting the meaning of the term "pollution damage". If approved by the Senate, this un-

derstanding would be appended to the U.S. instruments of ratification.

I recommend, therefore, that the 1984 Protocols to the Civil Liability and Fund Conventions be transmitted to the Senate as soon as possible for its advice and consent to ratification.

Respectfully submitted,

GEORGE P. SHULTZ.

Enclosures:

1. Technical Report.
2. Final Act.

TECHNICAL REPORT OF THE DEPARTMENT OF STATE

This is a report on two Protocols, adopted in 1984, respecting liability and compensation for marine oil pollution damage: The Protocol of 1984 to Amend the International Convention on Civil Liability for Oil Pollution Damage, 1969 (CLC Protocol) and The Protocol of 1984 to Amend the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971 (FC Protocol). The two Protocols were adopted at a Diplomatic Conference held at the Headquarters of the International Maritime Organization (IMO) in London, from April 30, 1984 to May 25, 1984. The Final Act of the Conference was signed by the United States and 59 other nations on May 25, 1984. The Protocols were opened for signature on December 1, 1984 and were signed by the United States on February 12, 1985.

The Diplomatic Conference was attended by 71 States (including two which sent observers), as well as by 31 inter-governmental and non-governmental organizations and bodies of the United Nations.

I. Background

As their titles indicate, the Protocols amend two Conventions: the International Convention on Civil Liability for Oil Pollution Damage, 1969 (CLC) and the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971 (FC). Although the United States is a signatory to both Conventions, it is not a Party to either one. Both are, however, in force internationally.

The two Conventions were adopted as a result of the worldwide concern about the need for a system of liability and compensation for tanker source marine oil pollution, a concern heightened by the 1967 sinking of the tanker Torrey Canyon off the coast of the United Kingdom. A 1969 Diplomatic Conference convened by IMO (then called the Inter-Governmental Maritime Consultative Organization—IMCO) in Brussels, Belgium, resulted in two agreements: CLC and the International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties (Intervention Convention). CLC establishes a system of liability of owners of tankers for certain damages due to discharges of oil at sea. The system, which will be discussed in more detail below, essentially provides for liability without fault, but sets relatively low limits on that liability, limits tied to the tonnage of vessel, with the maximum reached for a vessel of 105,000 tons. Although it was recognized that the regime established by the CLC was a significant improvement over the pre-existing situation, it was also recognized that the low liability limits would not be sufficient to provide adequate compensation in the event of a significant marine oil spill.

Consequently, a second Diplomatic Conference, held in 1971 in Brussels, Belgium, adopted the FC Convention. FC establishes a compensation—not a liability—system in which oil pollution damage suffered in States Parties and not compensated under CLC is compensated by an international fund (the International Oil Pollution Compensation Fund—Fund or IOPC Fund) to which contributions are made by persons receiving seaborne oil in annual quantities of 150,000 tons or more. The FC regime permits compensation for such damage up to a specified maximum, irrespective of the tonnage of the vessel whose spill caused the damage. As a result of 1976 Protocols to both Conventions, the liability and compensation limits are now valued in International Monetary Fund Special Drawing Rights (SDRs).[1] Those limits are as follows: for CLC—133 SDRs per ton, not to exceed 14 million SDRs; for FC—45 million [2] SDRs.

Notwithstanding the overall improvements which the FC made in the international regime for oil pollution liability and compensation, it was still not clear that United States interests would be adequately served by participation in those Conventions. Neither Convention received the Senate's advice and consent to ratification, although both were transmitted to it.

Even nations that are Parties to both Conventions have recognized that they have several shortcomings, with respect to, *inter alia*, liability and compensation limits, types of vessels covered, types of damage covered, and geographic scope of application. In addition, a number of those nations recognized that, because the United States is the world's largest receiver of seaborne oil, it would be advantageous to have a CLC/FC regime attractive to the United States. As a result, following upon informal meetings of interested governments in Washington and Stockholm during 1981, the Legal Committee of the IMO began, at its 48th session in 1982, to develop draft Protocols to both Conventions. That work, including inter-sessional efforts, continued through September 1983; the Diplomatic Conference ensued in April and May of 1984.

A. THE BASIC STRUCTURE OF THE 1969 CLC

CLC applies to damage caused within a Party's [3] territory, including the territorial sea, by discharges of persistent oil (e.g., crude oil or heavy diesel oil) from ships carrying oil in bulk as cargo and to preventive measures taken to prevent or minimize that damage following a discharge. The owner of such a ship is

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[1] At present, 1 SDR = approximatly $1.00, the lowest SDR-dollar ratio in some time. Any decline in the dollar, relative to the other SDR-basket currencies (British pound, French franc, West German mark and Japanese yen), will increase the dollar value of the SDR.

[2] This level represents the total per incident compensation available from both the shipowner under CLC and the Fund under FC. It should also be noted that the original per incident compensation amount of 30 million SDRs was raised by the FC Parties through the FC's Assembly to its current 45 million SDR level.

[3] CLC and FC each use the term "Contracting State" to refer to a State for which the respective Convention is in force. More contemporary usage would refer to such a State as a "Party" or "State Party". Those terms are used in those portions of the Protocols that do not amend the basic Conventions, but "Contracting State" is used in those parts amending the basic Conventions. In this report, however, the Vienna Convention on the Law of Treaties usage will be followed. States for which an agreement is in force will be referred to as "Parties". The term "Contracting States" will only be used in the rare instances where provisions apply to States that have ratified an agreement, even if it is not in force for them.

liable, without fault, although there are certain defenses available to the owner, i.e. generally speaking, where the damage is caused by acts of God, armed conflict, acts of third parties done with intent to cause damage, negligent acts of Governments respecting aids to navigation and negligent acts of injured parties or acts of such parties done with intent to cause damage. The sole liability of the owner shall be under the Convention regime and no action may be brought against the owner's servants or agents. The owner's liability is limited to 133 SDRs per ton of the ship's tonnage, up to a maximum of 14 million SDRs (a plateau reached at approximately 105,000 tons).[4]

Parties must ensure that ships of their registry carrying over 2,000 tons of bulk oil as cargo have insurance or other financial security adequate to meet their obligations under the CLC regime; the existence of such insurance or financial security is evidenced by a certificate issued by the flag State. Parties also undertake not to allow ships carrying over 2,000 tons of oil in bulk as cargo to enter or leave their ports or offshore terminals without the necessary insurance or financial security. Actions for damages under the CLC regime may only be brought in courts of Parties. Judgments issued in any such courts and no longer subject to review are, with very limited exceptions, to be recognized in the courts of any other Party.

B. THE BASIC STRUCTURE OF THE 1971 FC

Parties to FC must also be parties to CLC, although the reverse is not true. FC establishes the IOPC Fund, an excess coverage fund for compensation of damages suffered in the territories, including the territorial seas, of Parties, caused by discharges of oil from ships carrying oil in bulk as cargo. The Fund pays compensation when the ship owner is not liable under CLC (e.g., because the discharge was due to an act of God), when the ship owner is financially incapable of meeting his obligations under CLC, or when the amount of damage exceeds the owner's limit of liability under CLC. The Fund pays compensation in such cases involving discharges of oil from ships, except when damage is attributable to armed conflict (or discharge from a government ship on government non-commercial service) or to negligent acts of the claimant or intentional acts of such person, if done with intent to cause damage. Under certain conditions, the Fund indemnifies the ship owner for payments made pursuant to the CLC regime.

The maximum amount payable by the Fund for a single incident is limited to a sum that, together with amounts actually paid by the vessel owner under CLC (and together with any indemnification payments made by the Fund to the vessel owner) totals 45 million SDRs. This 45 million SDR total does not vary with the tonnage of the ship involved.

The Fund is supported by pro-rata financial contributions from persons (including governments) who, at installations within Par-

[4] When CLC and FC entered into force, monetary amounts were expressed in gold francs. In 1976 Protocols were adopted converting these amounts to SDRs. The 1976 CLC Protocol has entered into force, and the international Fund's internal accounting is conducted in SDR values. Consequently SDR values will be used throughout this document.

ties, receive seaborne crude and heavy fuel oil (so-called "contributing oil") in annual quantities exceeding 150,000 tons. Payments are made directly by such persons or, at the option of the Party, may be made by the Party on behalf of any such person who receives oil within its jurisdiction.

The Fund is governed by an Assembly of all States Parties, with some functions delegated to an Executive Committee; administrative functions are performed by a Secretariat headed by a Fund Director. Actions against the Fund must be brought in courts competent to hear actions against a shipowner for the same incident. However, if the action against the shipowner is brought in a State not a Party to the FC, actions against the Fund may be brought in its headquarters State or in any Party in which an action might have been brought against the shipowner. Judgments against the Fund, rendered in a court in one Party and no longer reviewable, are, with very limited exceptions, to be recognized in the appropriate court in any other Party.

C. ORIGIN OF THE CLC AND FC PROTOCOLS

As noted above, due largely to subsequent reevaluation of the dollar and inflation, it appeared necessary to effect significant changes to the CLC and FC regimes to ensure adequate compensation for all legitimate claims from reasonably foreseeable marine oil spills. It was generally agreed, however, that the current system of compensation and liability—placing primary responsibility for compensation on the vessel owner and responsibility for necessary additional compensation in catastrophic cases on a fund supported by seaborne oil receipts—was a basically satisfactory one. It therefore seemed prudent to attempt to amend the current system, rather than develop an entirely new one, a conclusion bolstered by the fact that the Fund had already come into existence as an operating entity.

Thus, it was agreed within IMO that new agreements incorporating necessary changes in the existing regimes should be developed as Protocols to the existing Conventions, rather than wholly new treaties. Each Protocol provides that, as between Parties to it, the basic Convention and the Protocol shall be read and interpreted as one instrument. For ease of reference, each Protocol also provides that specified provisions of the basic Conventions as amended by the Protocol, shall be known, respectively, as the International Convention on Civil Liability for Oil Pollutin Damage, 1984 and the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1984.

This approach required resolution of several issues, the first being whether States would have to become Parties to the existing Conventions before becoming Parties to the Protocols. Early on, however, it was agreed that these Protocols would permit States to become Parties to them and their revised regimes without first becoming Parties to the current Conventions. Of course, States that choose to do so do not have the benefits of participation in any regime until the Protocols enter into force in accordance with their terms. The second issue was the manner in which the global system of liability and compensation would make the transition

from the current regimes to the revised ones. That process, necessarily a rather complicated one, is discussed more fully below.

The final issue was the extent to which non-Parties to the current Conventions would be permitted to participate in the Diplomatic Conference to develop the Protocols. That issue was resolved by an invitation to all IMO members, all members of the United Nations, and all members of the specialized Agencies to participate in the Conference, whether or not they are Parties to either Convention and a Conference decision that all participants would have the right to vote in the Committee and Plenary Sessions. In committees, all decisions were taken by a simple majority vote of the States present and voting; in the Plenary Session, decisions on amendments (i.e., on Protocol provisions) were taken by a two-thirds majority vote of all States present and voting, provided, however, that such majority included at least one-half of the Parties to the Convention being amended present and voting. Thus, the United States was able to take an active part in the negotiations at the Diplomatic Conference, not merely expressing its views on substantive issues, but voting on them, as well.

II. Negotiations

Some changes to the current regimes were the subject of essential agreement in the IMO Legal Committee and, therefore, were not significantly debated in the Diplomatic Conference. For example, it was generally accepted that the Protocols would apply to unladen tankers as well as those actually carrying oil in bulk as cargo. Similarly, it was generally accepted that claims for compensation under both Protocols could be made for preventive measures taken in response not only to actual discharges, but to situations in which there is some (then unspecified) level of threat of pollution damage.

There remained, however, a number of important issues, including some related or subsidiary to those already resolved, that required resolution at the Diplomatic Conference. Among them, the following were of particular interest to the United States:

1. Issues relating to compensation amounts:
    a. Vessel owner limits under CLC Protocol.
    b. Fund compensation limits.
    c. Simplified procedure for updating maximum limits.
2. Issues involving application of the Protocols:
    a. Vessels to which they are applicable.
    b. Oils to which they are applicable.
    c. Geographic scope of application.
3. Issues relating to types of damage covered:
    a. Definition of "pollution damage".
    b. Preventive measures in response to threatened damage.
4. Issues relating to liability under CLC Protocol:
    a. Channeling of liability to ship owner alone.
    b. Vessel owner's ability to limit liability.
5. Issues involving the administrative structure of the Fund.
6. Issues involving matters of treaty law:
    a. Entry-into-force provisions.
    b. Provisions facilitating transition from old regimes to new.

1. Issues relating to compensation amounts

a. Vessel owner liability limits under CLC Protocol: The issue of compensation limits in general was the most important and the most contentious at the Diplomatic Conference, and the issue of vessel owner liability limits, in particular, may have been even more troublesome than that of Fund limits. In negotiating the revisions to CLC and FC, the primary objective of the United States was to ensure adequate protection of the United States and its citizens from the results of oil spills from seagoing ships which carry oil in bulk as cargo.

It was the desire of the United States and a number of other countries, not only to develop a total liability and compensation package that would adequately protect all legitimate claimants from foreseeable oil spill incidents, but also to ensure a reasonable allocation of responsibility between the shipowners and the cargo interests (the receivers of oil who contribute to the Fund), across the range of predictable incidents. Achieving this goal required a significant increase in the per-ton liability of vessel owners, in the total liability of owners of the largest vessels, and in the liability of owners of smaller vessels (which may have an ability to cause damage disproportionate to their size). After lengthy and difficult negotiations, the Diplomatic Conference reached agreement on limits of liability for vessel owners according to the following schedule:

—for ships not exceeding 5000 units of tonnage, a flat limit of 3 million SDRs;

—for ships over 5000 units of tonnage, 3 million SDRs, plus 420 SDRs per each unit of tonnage over 5000, but not to exceed a total of 59.7 million SDRs.

B. Fund compensation limits: In the event of a spill that exceeds shipowner liability limits, the Fund would be the source through which damaged persons would seek adequate compensation. It was agreed, therefore, that Fund limits should be sufficiently high to warrant reliance on the CLC-FC regimes. A major problem, however, results from the fact that the Fund is supported by contributions from member States in proportion to their receipts of contributing oil, and a relatively few countries account for a substantial part of the world's seaborne oil receipts. The problem could have been exacerbated, if the FC Protocol's final clauses permitted entry into force upon ratification by one or two States receiving a large amount of oil and a handful of others, receiving small amounts. In such a case, the one or two large receivers would bear virtually the entire burden of the increased compensation limits.

The FC Protocol reaches an accommodation between the twin concerns of ensuring adequate compensation and of avoiding undue burdens on individual Parties by establishing a two-step compensation limit:

—when the sum of the annual amounts of contributing oil received in the three Parties to the FC Protocol who receive the greatest amounts is less than 600 million tons, the total compensation payable for one incident (under both CLC and FC Protocols) in the succeeding calendar year will not exceed 135 million SDRs;

—when that sum equals or exceeds 600 million tons the total compensation payable under CLC and FC Protocols jumps to 200 million SDRs for the succeeding calendar year.

The first step, the so-called "basic coverage," provides a level of protection three times greater than that available under the current regimes. The second step, the so-called "extended coverage," provides coverage in an amount that is expected to compensate legitimate claimants from virtually any foreseeable oil spill. It ensures, however, that no one country will bear virtually the entire burden of funding such a level of compensation by requiring that, among the Parties, three account for 600 million tons of contributing oil. This means that the 200 million SDR limit will arise only if a number of the largest recipients of contributing oil are Fund members. Indeed, given current oil receipt patterns, it means that the 200 million SDR limit can arise only if the United States and two other major recipients are Fund members.

These limits should be adequate to compensate all legitimate claimants from any oil spill likely to occur in U.S. waters.

c. Simplified procedure for updating maximum limits: Under the current Conventions, any increase in liability limits under CLC and any increase beyond 60 million SDR in Fund compensation plus CLC recovery limits would require amendment of the Conventions at a Diplomatic Conference. Given the difficulties of convening such a Conference, compounded by the necessary delay attendant on entry into force of any amendment, such a change, if made, would very likely be both too little and too late. Nevertheless, there is a real possibility that worldwide inflation might render currently satisfactory amounts inadequate in only a relatively few years.

In order to solve this problem, the U.S. and other States sought a more expeditious procedure which both facilitates changes necessitated by inflation and allows adequate opportunity for Contracting State governments to review changes made before their acceptance and entry into force. Each 1984 Protocol, therefore, contains a procedure under which amendments respecting liability and compensation amounts, proposed by ¼ of its Contracting States, can be adopted during a designated meeting of the IMO Legal Committee, by a ⅔ majority of Contracting States present and voting as long as ½ of the Contracting States are present at the vote. An adopted amendment will be deemed to be accepted unless, within 18 months thereafter, at least ¼ of the Contracting States reject it. Eighteen months following this "tacit acceptance" procedure the amendments will enter into force for all Contracting States, except those which denounce the Protocol within the first 12 months of this period. Increases may not exceed 6 percent per year, compounded, from 1984, and an increased limit may at no time exceed three times the original amount. Limits may not be considered at less than five year intervals.

It is believed that this procedure offers a good balance between the desire of the United States to ensure that the amended CLC-FC regime continues to afford adequate protection to prospective United States interests, and to avoid having radically higher liability and compensation levels established against our wishes.

2. Issues involving application of the Protocols

a. Ships to which they are applicable: The Conventions apply only to ships actually carrying oil in bulk as cargo (i.e., in tanks that are an integral part of the ship), but there can be a significant pollution problem, as well, in the event of a discharge from a ship that is *capable* of carrying oil in bulk as cargo but is not doing so at the time of the incident. As noted above, there was early agreement that the Protocols should also apply to unladen tankers, i.e., ships that can only carry liquid cargoes in bulk, even when they are not actually carrying oil in bulk as cargo. The more difficult question involved application to so-called combination carriers, i.e., ships that can carry either liquid or dry cargoes in bulk, if they are not actually carrying oil in bulk as cargo at the time of an incident. Although there was some opposition from other delegations, the view supported by the United States ultimately prevailed; namely, that the Protocols would apply (a) to tankers on any voyage and (b) to combination carriers on any voyage where oil is carried and any succeeding one unless, in the latter case, it is proven by the discharger that the combination carrier had, at the time of the incident, no residues of the carriage of bulk oil as cargo.

b. Oils to which the Protocols are applicable: The Conventions apply only to so-called persistent oils, which includes certain heavy petroleum oils, e.g., crude oil and fuel oil. There was some consideration given to expanding the coverage of the Protocols to include non-persistent oils, such as gasoline and kerosene, but the Diplomatic Conference was of the opinion that expansion to include such products was not desirable for CLC and not feasible for FC. Consequently, the only change to the oil coverage was specification that the Protocols apply only to persistent *hydrocarbon* mineral oils, and the deletion of whale oil from CLC coverage.

c. Geographic scope of application: The Conventions currently apply to damage suffered only in the territories (including territorial seas) of Parties and to preventive measure taken to prevent or minimize such damage. Such limited geographic application has not been considered to be in the interests of the United States, nor is it consistent with existing domestic liability regimes (e.g., section 311 of the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1321; Deepwater Port Act of 1974, as amended, 33 U.S.C. § 1517; and Outer Continental Shelf Lands Act, as amended 43 U.S.C. § 1811 *et seq.*) or the rights that the United States and other coastal States have in 200 nautical mile exclusive economic zones beyond their territorial seas, under the customary international law reflected in the 1982 United Nations Convention on the Law of the Sea (LOS Convention). At the Diplomatic Conference, extension of the geographic scope of application was an extremely contentious issue, both as to the basic concept and as to the definition of an expanded geographic area. In the end, the interests of countries with large coastlines and considerable offshore resources prevailed. The geographic scope was broadened to include a State's exclusive economic zone (EEZ) or, for a State without an EEZ, a properly declared zone not exceeding 200 nautical miles from the coast, provided, in each case, that the zone is established in accordance with

international law. In addition, the provision now makes explicit what has previously been the implication; namely, that the Convention applies to appropriate preventive measures *wherever taken,* to prevent or minimize damage within the specified zones.

3. Issues relating to the types of damage covered

a. Definition of "pollution damage": The Protocols contain a new definition of pollution damage which provides that damage to the marine environment "other than loss of profit from such impairment shall be limited to costs of reasonable measures of reinstatement actually undertaken or to be undertaken". It has been argued that this new definition enlarges the scope of compensable pollution damage and is broad enough to allow remote and speculative claims.

Under the definition in the existing CLC and FC, compensation for damage to natural resources or restoration of the marine environment is neither specifically permitted or precluded. Instead, national courts are left to determine whether such damages or restoration are compensable under the notion of pollution damage as set out in the convention.

In the case of the *Antonio Gramsci,* the Soviet Union, a Party to CLC but not FC, took advantage of this broad definition and recovered natural resource damages determined by mathematical calculation involving the amount of oil spilled and the volume of water affected, rather than any actual damage.

In response to this case the IOPC Fund Assembly (even though the Fund was not liable for the claim) adopted a resolution stating that the assessment of compensation "is not to be made on the basis of an abstract quantification of damage calculated in accordance with theoretical models." It was the clear goal of all delegations to the Diplomatic Conference, including the U.S., to exclude such speculative claims by codifying the gist of the Fund Assembly resolution.

U.S. courts have recognized the right to recover costs of reasonable measures to restore the marine environment even if those measures are to be undertaken in the future. (see *Puerto Rico v. S.S. Zoe Colocotroni* 628 F. 2d 652 (1st Circuit 1980), *cert. denied,* 450 U.S. 912 (1981)). Thus, the U.S. sought both a more restrictive definition of pollution damage than the one in the existing conventions and one which would specifically permit recovery for reasonable measures to restore the marine environment.

The new definition in the 1984 Protocols achieves both goals. By providing that compensation for damage to the marine environment, other than loss of profit, is limited to the costs of reasonable measures of reinstatement actually undertaken or to be undertaken, it eliminates the *Antonio Gramsci* type of claim where no damage was established and no measures were undertaken or were planned to be undertaken to restore the marine environment. By specifically recognizing the right of recovery for reasonable restoration measures the new definition ensures that U.S. claimants will not lose these currently established rights on adoption of the 1984 Protocols.

It has been argued that the words "or to be undertaken" present an opportunity for claims to be made with only a vague commit-

ment to carrying out unspecified remedial measures sometime in the future, and that compensation payments could be used for purposes other than restoration.

The U.S. delegation understood these words to apply to situations in which actual damage has been established, all planning and preparation for restoration has been completed, and the sole reason for these measures not having been undertaken already is a lack of funds. In addition, such restoration measures as well as those already completed must meet the test of reasonableness in order to be compensable. Finally, the delegation understood this language to require that compensation payable by the IOPC Fund would be available only to remedy damage with regard to the particular incident for which such compensation is allowed, not for any other incident or purpose. These views were expressed by the United States and other delegations, including those of the United Kingdom and the Federal Republic of Germany and by the observer of the International Group of P & I Associations. Such statements form the "legislative history" for the appropriate interpretation of this provision. Similar views have also been expressed as a personal opinion by the Director of the IOPC Fund.

Although we believe the new definition is clear, in light of the concerns that have been expressed, the United States Department of State intends to state the United States understanding of its intent and meaning when our instrument of ratification is deposited. A proposed interpretive statement is included as Attachment I to this report.

If a person were to assert against the Fund a pollution damage claim inconsistent with that understanding, there are a number of steps which the United States could take to protect the integrity of its contributions to the Fund. At the settlement stage it could urge the Fund Assembly and the Director that payment should not be made on the claim in settlement. This could be done directly or potentially through the subsidiary body contemplated by the FC Protocol. It may be expected that the view of the Fund's major contributor, based upon a principled understanding, reflective of statements made by representatives of several of the FC Protocol's prospective Parties at the Diplomatic Conference, will be given substantial weight. If necessary an extraordinary session of the Assembly might be convened, as provided for in the Protocol.

If however, the claimant, having been denied payment on the improper claim, may seek and obtain a judgment against the Fund in its national court. By the terms of FC Protocol the Fund would normally be bound by a national court's judgment. However, in a case such as that presented here it remains open for the United States to demand that the Fund not pay on the judgment on the grounds that the judgment is inconsistent with the Protocols, and to encourage like minded States to do likewise.

Should the Fund, contrary to objections of the U.S. and others, pay on the improper claim either in settlement or on a national court's judgment, the United States would need to consider other courses of action such as withholding the portion of assessed U.S. contributions attributable to the wrongful payment.

Among other courses of action, the United States would always have the option of denouncing the FC Protocol following the re-

quired one year waiting period. However, it must be emphasized that the potential need for any of the actions described above is extremely remote. It must be recalled that the Fund Assembly has taken a strong position against paying improper claims. Furthermore, to date claimants have been more interested in fully and promptly resolving their claims through negotiated settlements with the Fund than in engaging in costly litigation. We have no reason to believe that attitude will change under the FC Protocol.

b. Preventive measures in response to threatened damage: Under the current Conventions, certain preventive measures are considered to be "pollution damage" and, therefore, compensable. Such preventive measures must, however, be those taken after the occurrence of an "incident," which is defined to occur only when there has been an actual escape or discharge of oil. There was general agreement that the Conventions should also apply to reasonable preventive measures taken in response to situations threatening pollution damage, the only real question being the words used to specify the requisite likelihood of damage. In the end, the Diplomatic Conference settled on the phrase, "grave and imminent," the language used in the 1969 Intervention Convention. Accordingly, the Protocols now define an "incident" as an occurrence (or series of occurrences) causing pollution damage or creating a grave and imminent threat of doing so. This meets the U.S. objective of encouraging States and other persons, including the affected shipowner, to take preventive measures without having to wait until a situation becomes so serious that a discharge has occurred.

4. Issues relating to liability under CLC Protocol

a. Channeling of liability to shipowner alone: The CLC provides that an action against the shipowner for pollution damage may only be brought in accordance with the Convention; it further provides that no action at all may be brought against the owner's servants or agents. The CLC Protocol continues the first restriction and expands the second. In the negotiation of the Protocol, the issue was known as "channeling", a system used in other countries, under which a regime may be established, imposing liability on a certain class of persons, but limiting the exposure of such persons to actions pursuant to the regime and, in addition, insulating other persons from actions for the same loss or damage. It was generally considered that the channeling provisions, in the main, represented a fair accommodation of all interests, limiting the number of persons from whom damaged parties might seek recoveries (except in cases of intentionally or recklessly tortuous acts), in exchange for a regime of strict liability of the shipowner with significantly increased compensation limits. It was further considered that channeling eliminated the need for some possible litigation defendants (e.g., pilots or certain vessel charterers) to carry insurance coverage duplicating that of the shipowner and that it eliminated a possible deterrent to persons (e.g., certain salvors and others taking preventive measures) who could help minimize the pollution damage caused by an incident. It was also considered beneficial to prospective claimants, since it limited the number of persons against whom such claimants might have to bring actions in order to be assured of a full resolution of liability issues.

It might be argued that some protected persons, especially bareboat charterers, are as responsible for the ship's safe operation as the owner and, therefore, do not merit such virtual insulation from liability. On balance, however, it was felt that inclusion of such charterers among the protected class was a reasonable method of channeling all liability to the owner. Consequently, the CLC Protocol now exempts from liability all charterers, salvors and persons taking preventive measures, as well as their servants and agents and servants and agents of the shipowner. This exemption from liability does not, however, apply to personal acts or omissions of such persons done with intent to cause damage or recklessly and with knowledge that damage would probably result.

b. Shipowner's ability to limit liability: Under the CLC, a shipowner may not limit his liability to the amounts specified in the Convention, if the incident causing pollution damage occurred with the owner's "actual fault or privity." The location of the burden of proving the existence or non-existence of facts concerning the owner's right to limit liability is not certain under CLC. However, the language appears to indicate that the owner must prove that the right exists. Under the CLC Protocol, it will be more difficult to "break" the shipowner's limits of liability, because it must be proved that damage resulted from the owner's *personal* act or omission, committed with the intent to cause damage, or recklessly and with knowledge that such damage would probably result. In addition to the more stringent standard, the Protocol clearly provides that the owner is entitled to limit liability unless the necessary facts are proved. It was generally considered that, in light of the strict liability of the owner and the substantially higher liability limits set by the Protocol, it is necessary to provide a high degree of certainty as to shipowners' entitlement to invoke those limits.

5. Issues involving the administrative structure of the Fund

The Fund, as currently constituted, is governed by an Assembly of all member States, with some duties conferred upon an Executive Committee comprising roughly one-third of the member States. Day to day administration of the Fund is provided by a Secretariat, headed by a Fund Director, who is guided in certain decisions by the Executive Committee and the Assembly. The Executive Committee is required to apportion its membership in light of significant interests; relevant considerations are to include geographic distribution, representation of States particularly exposed to oil pollution hazards and representation of States with large tanker fleets. In addition, one-half the Executive Committee membership is to be from States having the largest quantities of contributing oil. The Executive Committee was considered unwieldy in the past.

The Diplomatic Conference adopted a proposal to abolish the Executive Committee for the Fund established under the 1984 Protocol. (The 1984 Fund will be wholly separate from the current Fund). The FC Protocol authorizes, in lieu of an Executive Committee, appointment of temporary or permanent bodies responsible to the Assembly. In appointing the members of such bodies, the Assembly shall seek equitable geographic distribution as well as appropriate representation of the Parties having the largest amounts

of contributing oil. Consequently, the United States takes the view and would expect that it will be represented in such bodies.

6. Issues involving matters of treaty law

a. Entry-into-force provisions: In order to ensure that the Protocols will enter into force only when there will be participation by a substantial number of significantly affected States, each provides for entry into force based on more than mere numbers of effective ratifications or accessions. Because the CLC Protocol involves shipowner liability, it will enter into force only after deposit of effective instruments of ratification or other similar instruments, by 10 States—six of which must each have at least one million units of gross tanker tonnage. Because the Fund will provide coverage supplementary to the shipowner liability, and will be supported by contributions based on seaborne oil receipts, the FC Protocol will enter into force only after the CLC Protocol enters into force and after deposit of effective instruments of ratification or other similar instruments by eight States accounting for a total of at least 600 million tons of contributing oil.

It is important to note that, in order to count towards entry into force of the Protocols, deposited instruments must be *effective*. This issue will be discussed more fully in the next section, but it essentially relates to the fact that a State may deposit an instrument of ratification to either or both Protocols and declare that such instrument shall not be deemed effective until a point specified in the Protocols. That is the point at which a sufficient number of States have ratified the 1984 FC Protocol to trigger the requirement that Parties to FC which have also ratified the FC Protocol must denounce both original Conventions. This provision is of benefit to countries, like the United States, that would not want to participate in the new regimes until there are enough other participants to ensure their economic viability and that would wish to avoid the complexity associated with the transitional provisions discussed below. A proposed declaration to accomplish this for the United States is included as attachment III to this report.

b. Transitional provisions: A peculiarity, and a particularly difficult aspect, of the CLC and FC Protocols is that of transition from the old to the new regimes. This issue derives from the fact that the Protocols will modify an existing compensation system involving two separate, albeit related, treaties, with the possibility that all four agreements—1969 CLC, 1984 CLC Protocol, 1971 FC, and 1984 FC Protocol—and their differing compensation provisions could be in force simultaneously. The problem is complicated by the fact that Parties to FC must also be Parties to CLC, a requirement that will apply as well to the respective Protocols.

The transitional period prescribed by the two Protocols has a definite beginning and a definite ending. The transitional period begins when 1984 CLC Protocol enters into force,[5] and ends when the Contracting States to the 1984 FC protocol must denounce 1969

[5] 1984 CLC Protocol enters into force 12 months after at least 10 States, 6 of whom have at least one million gross tons of tanker tonnage, have deposited effective instruments of ratification, acceptance, approval, or accession.

CLC and 1971 FC.[6] At the conclusion of the transitional period only 1984 CLC and 1984 FC will be in force for Parties to 1984 FC Protocol. Since most major contributing States will no longer be party to 1971 FC, it is expected that, as a practical matter, the 1971 FC regime will cease to exist.

During the transitional period a complex system of treaty relationships and liability and compensation procedures will apply. The Protocols allow for two stages to exist during this period. The first stage begins with the commencement of the transition period and ends with the entry into force of 1984 FC Protocol.[7] The second stage begins when 1984 FC Protocol enters into force and ends with the termination of the transitional period. The complexity referred to in the foregoing paragraph may be visualized when it is recognized that during the first stage States having mutual treaty relationships may be parties to

(1) 1969 CLC only,
(2) 1969 CLC and 1971 FC only,
(3) 1984 CLC Protocol only,
(4) 1969 CLC and 1984 CLC Protocol only, or
(5) 1969 CLC, 1971 FC, and 1984 CLC Protocol;

and that during the second stage States having such relationships may be parties to—

(1) 1969 CLC only,
(2) 1969 CLC and 1971 FC only,
(3) 1984 CLC Protocol only,
(4) 1969 CLC and 1984 CLC Protocol only,
(5) 1969 CLC, 1971 FC, and 1984 CLC Protocol only,
(6) 1984 CLC Protocol and 1984 FC Protocol only,
(7) 1969 CLC, 1984 CLC Protocol, and 1984 FC Protocol only, or
(8) 1969 CLC, 1971 FC, 1984 CLC Protocol, and 1984 FC Protocol.

The transitional period is provided in the two Protocols primarily to meet the concerns of the current parties to 1969 CLC and 1971 FC who desire to enjoy the benefits of the 1984 Protocols before those Protocols can stand on their own as a viable regime. Since the United States is not a Party to the current Conventions, there is little, if any, benefit for this country to participate in the transitional period at all. Provision is made within the Protocols to allow the United States and other countries, whether Parties to 1969 CLC and 1971 FC or not, to avoid participation during this transitional period.

A State, such as the United States, wishing to defer participation in the 1984 CLC/1984 FC regime until the conclusion of the transition period may include a special declaration on the subject with its instruments of ratification, acceptance, approval, or accession

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[6] The mandatory denunciations must be made within 6 months of the date on which at least 8 States have deposited instruments of ratification, acceptance, approval, or accession respecting 1984 FC Protocol, and the total amount of contributing oil received in those States during the preceding calendar year was at least 750 million metric tons. These denunciations take effect 12 months after the 6 month period expires.

[7] 1984 FC Protocol enters into force 12 months after 8 States have deposited effective instruments of ratification, acceptance, approval or accession respecting 1984 FC Protocol, and the total amount of contributing oil received in those States during the preceding year was at least 600 million metric tons.

respecting the Protocols. The declaration would state that the instrument shall not take effect until the end of the time period within which the mandatory denunciations of 1969 CLC and 1971 FC must be made.[8] By making such a declaration the United States would not only be able to void participating in the complex transition period, but would be able to begin its participation in the 1984 FC regime when there are at least 750 million tons of contributing oil included within the scheme. This will result in a broader distribution of the contribution burden among the Parties to the 1984 FC of the contribution support of the international fund.

The provisions of the Protocols providing for the declarations discussed above meet the needs of the United States. They permit the United States to take the lead in ratifying the Protocols, thereby encouraging other States to participate in the 1984 regime. However, they allow the United States to avoid the complex transitional period as well as to defer its participation in the regime until its costs may be broadly shared with its treaty partners.

III. Article-by-Article Analysis

Because these two Protocols constitute significant revisions of existing Conventions, it is difficult to provide a comprehensive analysis of them by limiting the discussion to the provisions of the instruments themselves. Consequently, this portion of the Report will take the form of an article-by-article analysis of the 1969 CLC and 1971 FC Conventions, as amended by their respective 1984 Protocols. Provisions that have been added or revised by the Protocols will be denoted with an asterisk, and their source in the Protocols will be cited. Unless otherwise noted, references to the "Convention" will mean the so-called 1984 Liability Convention or the 1984 Fund Convention, as appropriate.

A. CLC

Article I. Defines the following terms:

—"ship" to include certain unladen vessels capable of carrying oil in bulk as cargo* (Art. 2.1);

—"person" to include natural and juridical persons including a state or governmental bodies;

—"owner";

—"State of the ship's registry";

—"oil" to include persistent hydrocarbon mineral oils* (Art. 2.2);

—"Pollution damage" to include damage outside the ship from contamination due to oil escape or discharge, including environmental impairment to the extent of loss of profit and the costs of reasonable measures of reinstatement actually undertaken or to be undertaken and preventive measures* (Art. 2.3);

—"preventive measures" to include reasonable measures taken after an incident occurs;

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[8] Twelve months after the end of that time period the Protocols will enter into force for the declaring State. It is important here to note that, notwithstanding the declarations, all States which have deposited instruments of ratification, acceptance, approval, or accession respecting the 1984 FC Protocol and their contributing oil receipts will be taken into account in determining the point at which the mandatory denunciations must be made.

—"incident" to include occurrences causing pollution damage or creating grave and imminent threats of pollution damage* (Art. 2.4);

—"Organization" to mean IMO* (Art. 2.5).

—"1969 Liability Convention"* (Art. 2.6).

Article II. Applies the Convention (a) to pollution damage in a Party's territory, including territorial sea, and in an exclusive economic zone or other zone, up to 200 nautical miles, properly declared in accordance with international law, and (b) to measures, wherever taken, to prevent such damage.* (Art. 3).

Article III. Establishes the basic liability regime:

—Imposes liability, except as otherwise provided, on the person owning the ship at the time of the incident causing pollution damage.* (Art. 4.1).

—Exempts the owner from liability when damage results from specified causes, including armed conflict, act of God, third party acts done with intent to cause damage, and negligence of authorities responsible for maintaining lights or other navigational aids.

—Exonerates the owner, wholly or partially, for liability for damage caused by negligence of the claimant or acts of the claimant done with intent to cause damage.

—Limits pollution damage claims against the owner to those made under the Convention; insulates from liability certain persons, including the owner's servants or agents, pilots, charterers, salvors and persons performing preventive measures, unless they cause damage intentionally or recklessly with knowledge that damage would probably occur.* (Art. 4.2).

—Owner's rights of recourse are not prejudiced.

Article IV. Unless damages are reasonably separable, owners of all ships involved in an incident are jointly and severally liable for all damages.* (Art. 5).

Article V. Establishes the liability limitation system:

—Owner's liability is limited to 3 million SDRs ("units of account") for the first 5000 tons and 420 SDRs per additional ton, to a maximum of 59.7 million SDRs.* (Art. 6.1)

—Liability may be limited unless it is proved that pollution damage was caused by the owner's act with intent to cause damage, or recklessly with knowledge that damage would probably result.* (Art. 6.2)

—To limit his liability, the owner must constitute a fund with the court or other competent body in a State in which a claim is brought or, if none is yet brought, with such a body in any Party in which a claim may be brought.* (Art 6.3)

—Such a fund shall be distributed to claimants *pro rata*.

—If the owner or his insurer has paid pollution damage compensation before distribution of the fund, he shall be subrogated to the claimant's rights against the fund.

—Other persons making pollution damage compensation payments may also be so subrogated, to the extent permitted by national law.

—Where the owner establishes that he will later have to pay for pollution damage in cases under which subrogation would otherwise be permitted, an amount may be set aside from the fund to cover such payments.

—Voluntary expenses reasonably incurred and sacrifices reasonably made by the owner to prevent or minimize pollution damage stand on an equal footing with other claims against the fund.

—The "unit of account" is the SDR, to be valued in the appropriate national currency on the date of the constitution of the fund. Special provisions are made for calculating the national currency value for States not members of the International Monetary Fund.* (Art 6.4)

—Tonnage is measured in accordance with the 1979 International Convention on the Measurement of Tonnage of Ships.* (Art 6.5)

—Even if the owner may not limit his liability, the insurer may constitute a fund, but this shall not prejudice any claimant's rights against the owner.* (Art 6.6)

Article VI. Where a fund has been constituted and the owner is entitled to limit his liability, no person having access to the body holding the fund and to whom funds are actually available may exercise any other claim against the owner's assets.

Article VII. Establishes mandatory insurance for some vessels:

—Owners of ships that are registered in Parties and that carry over 2000 tons of oil in bulk as cargo must maintain insurance or other financial security sufficient to cover their limits of liability.

—Certificates of financial security, in a specified form, shall be issued by appropriate authorities of Parties. Each Party shall issue certificates for ships of its own registry; any Party may issue certificates for vessels registered in non-Parties.* (Art 7.1)

—Certificates shall be in specified languages, including either French or English; copies shall be carried on board and shall be deposited with specified authorities.* (Art 7.2)

—Other than for lapse of time, insurance or other financial security may not be terminable, except upon certificate surrender to appropriate authorities, upon insurance of a new certificate or upon three months' notice to appropriate authorities. Subject to this Article, registry States shall determine the conditions of certificates of insurance.

—Certificates issued by a Party in accordance with this Article shall have the same force and effect in any other Party as a certificate issued by the latter.* (Art. 7.3, 7.4)

—Claims may be brought directly against the insurer or other person providing financial security. In such a case the insurer or other person may limit liability (even if the owner may not), may invoke most of the defenses invocable by the owner and may invoke the defense that the pollution damage resulted from the owner's willful misconduct.* (Art. 7.5)

—Parties shall not permit their flag vessels, to which this article applies, to trade without holding the required certificate. Parties shall not permit any vessels to which this article applies to enter or leave port or offshore installations without required certificates. Such Parties may issue appropriate certificates to such vessels of non-Parties, or they may authorize other States to do so on their behalf.

Article VIII. Establishes a limitation period for bringing actions: three years from the date on which damage was suffered, but not more than six years from the date of the incident.

Article IX. Provides that an action for compensation may only be brought in a competent court of the Party or Parties in whose land, territorial sea or other appropriate area pollution damage occurred or as to whose such areas preventive measures were taken. After a fund has been constituted in accordance with Article V, the courts of the Party in which it is constituted shall be exclusively competent to deal with its apportionment and distribution.* (Art. 8)

Article X. A final judgment in one Party, no longer subject to ordinary review, shall, upon compliance with necessary formalities, be enforceable in any other Party, unless obtained by fraud or without the defendant's having received reasonable notice and an opportunity to present his case.

Article XI. The Convention does not apply to warships or other governmental ships then used on non-commerical service. Ships owned by Parties and used on commerical service are liable to suit, and sovereign immunity for such vessels is waived.

Article XII. The Convention supersedes other conventions to the extent that there is a conflict, but does not affect the obligations of Parties to non-Parties.

Article XII bis. Establishes the following transitional provisions for States that are Parties to both the 1969 CLC and the 1984 Protocol:

—Liability for pollution damage under the Protocol shall be considered discharged if, and to the extent that, it also arises under the 1969 CLC.

—Where the State is also a Party to the 1971 FC, liability not discharged under the 1969 CLC shall arise under the 1984 CLC Protocol only to the extent that pollution damage remains uncompensated after recourse to the Fund under the 1971 FC Convention.

—The required amount of an owner's liability fund constituted under Article V shall be reduced by amounts paid under the 1969 CLC Convention.* (Art. 9)

Article XII ter. Articles 12 to 18 of the 1984 Protocol constitute the final clauses of the so-called 1984 Convention.* (Art. 9)

Protocol articles not amending parts of the 1969 Convention. The following articles, including the final clauses referred to in Article XII ter, above, do not in and of themselves amend provisions of the 1969 CLC even though effectively Articles 12 through 18 replace Articles XIII through Article XXI of the 1969 CLC by reason of new Article XII ter:

Article 10. Establishes a revised form for certificates of insurance.

Article 11. Declares that, as between Parties to the Protocol, the 1969 CLC and the Protocol shall be read together as one instrument and that Articles I through XII ter, as amended by the Protocol, shall be known as the 1984 Liability Convention.

Article 12. Deals with signature and ratification:

—Open for signature December 1, 1984 to November 30, 1985, with States becoming Parties by (a) signature followed by ratification, acceptance or approval or (b) accession.

—A State Party to the 1971 FC Convention may only ratify, etc. this Protocol if it ratifies, etc. the 1984 FC Protocol, or if it denounces the 1971 FC Convention, to take effect at the time the 1984 CLC Protocol enters into force for it.

—A State Party to the 1984 Protocol, but not a Party to the 1969 CLC, shall be bound by the 1969 CLC as amended, with respect to other 1984 Protocol Parties, but shall not be bound by the 1969 CLC with respect to CLC Parties not also Parties to the 1984 Protocol.

Article 13. Establishes entry into force provisions:

—The Protocol shall enter into force twelve months after the date of deposit of instruments of ratification (or similar instruments) by ten States, provided that six of those States each has at least one million units of gross tanker tonnage.

—At the time of deposit of its instrument ratifying 1984 CLC, a State, if it is a Party to the 1971 FC or, if not, if it also deposits an instrument ratifying the 1984 FC Protocol, may declare its instrument not to be effective until the date that States which are Parties to the 1971 FC and have ratified the 1984 FC Protocol must denounce 1969 CLC and 1971 FC. (This will occur after eight States, accounting for at least 750 million tons of contributing oil, have deposited ratification instruments for the 1984 FC Protocol.) This provision permits States to avoid participating in the 1984 CLC and 1984 FC regimes during the transition discussed above under 6.b. In addition, it permits States to avoid participating in those regimes until there are a sufficient number of participating States to ensure a reasonable distribution of the burden of supporting that Fund. A State making such a declaration may later withdraw it.

—For any State depositing its appropriate instrument after entry-into-force conditions have been fulfilled, the Protocol will enter into force twelve months after such deposit.

Article 14. IMO may convene a Conference to revise or amend the Convention and shall convene a Conference of Contracting States at the request of one-third of them.

Article 15. Establishes a simplified procedure for amending the liability limits:

If one-quarter of the Contracting States request that a limit be amended, the IMO Secretary-General shall circulate the proposal to all IMO members and all Contracting States.

—Such a proposed amendment shall be considered at an IMO Legal Committee meeting held at least six months after circulation, at which all Contracting States may participate.

—No amendment may be considered before December 1, 1989, nor before entry into force of the Protocol, nor within five years of the date of entry into force of a previous amendment. Total increases under this provision may not exceed six per cent annum, compounded, of the relevant limits established in the Protocol, calculated from December 1, 1984. In no event may a limit be increased to an amount more than three times the original limit.

—When considering proposed amendments, the Legal Committee shall consider the experience of incidents, changes in monetary values, effect on insurance costs, and the relationship between the limits set under 1984 CLC and the 1984 FC.

—Amendments shall be adopted in the Legal Committee by a two-thirds majority of Contracting States present and voting, provided that at least one-half of the Contracting States are present at the time of the vote.

—Amendments so adopted shall be circulated by the Secretary-General to all Contracting States and shall be deemed accepted unless, within 18 months, at least one-quarter of the Contracting States communicate their objections.

—Amendments so accepted shall enter into force 18 months later, and all Contracting States are bound thereby, unless they denounce the Protocol at least six months before such entry into force.

Article 16. Establishes rules for denunciation:

—Denunciations may be made any time after the Protocol enters into force for a Party; they are to be deposited with the IMO Secretary-General, to take effect 12 months (or such longer time as specified therein) later.

—A State which denounces the 1984 FC Protocol but remains a Party to the 1971 FC Convention shall be deemed to have denounced the 1984 CLC Protocol as of the date on which its 1984 FC Protocol denunciation becomes effective.

Article 17. Establishes responsibilities of the Secretary-General as depositary.

Article 18. Establishes the six official languages of the Protocol's original text: Arabic, Chinese, English, French, Russian and Spanish.

B. FC

Unlike the 1969 CLC, the 1971 FC numbers its articles with Arabic numerals, rather than Roman. All references to articles of the *FC Protocol* will, therefore, be designated "FCP," to distinguish them from Articles of the FC, whether or not amended.

Article 1. Defines the following terms:

—"1984 Liability Convention"* (Art. 2.1, FCP)

—"1971 Fund Convention"* (Art. 2.2; FCP)

—"ship," "person," "owner," "oil," "pollution damage," "preventive measures," "incident," "Organization," "unit of account," and "ship's tonnage" have the same meaning as in 1984 CLC* (Art. 2.3, 2.4, 2.5, FCP)

—"contributing oil" means crude oil and fuel oil as further defined therein

—"ton", in relation to oil, means metric ton

—"guarantor," to mean anyone providing insurance or other, financial security under 1984 CLC* (Art. 2.6, FCP)

—"terminal installation"

—an incident consisting of several occurrences shall be treated as having occurred on the date of the first one.

Article 2. Establishes the 1984 Fund. The Fund to be recognized as a legal person, with rights, obligations, and capacity to be a party in legal proceedings, in Parties. Parties recognize the Fund Director as the Fund's legal representative.* (Art. 3, FCP)

Article 3. Applies to pollution damage in the same geographic area as the CLC Protocol.* (Art. 4, FCP)

Article 4. Establishes the basic elements of the compensation system:

—The Fund shall compensate persons suffering pollution damage not fully and adequately compensated under 1984 CLC, either be-

cause there is no liability under 1984 CLC, because damage exceeds the owner's liability limits, because the owner is incapable of meeting his obligations and insurance or other security is inadequate.* (Art. 6.1, FCP)

—The Fund is not obligated to pay compensation if pollution damage resulted from armed conflict or from oil discharge by a warship or other government vessel on non-commercial service, nor is it obligated to pay if the claimant cannot prove that damage resulted from an incident involving one or more ships.

—The Fund shall be exonerated wholly or partially from compensating pollution damage caused in whole or in part by the negligence of the claimant, or by his act done with intent to cause damage, provided, however, that there shall be no exoneration with respect to preventive measures.* (Art. 6.2, FCP)

—The maximum amount of compensation payable for any one incident, including any compensation actually paid under the 1984 Liability Convention, shall not exceed 135 million SDRs, provided, however, that such maximum shall increase to 200 million SDRs when any three parties together account for at least 600 million tons of contributing oil. (Art. 6.3, FCP)

—Where the amount of established claims for one incident exceeds the amount of compensation available, payments shall be made *pro rata*.* (Art. 6.4, FCP)

—The Fund Assembly, in exceptional cases, may allow payment by the Fund even where the shipowner has not deposited security in order to limit its liability.* (ART. 6,5, FCP)

—The Fund may assist Parties, in finding personnel, material, and services to enable them to undertake preventive measures. The Fund may in accordance with its Internal Regulations provide credit facilities for preventive measures.

Article 5. Deleted (Art. 7, FCP). Article 5 had provided for partial indemnification of vessel owners for Liability Convention payments over specified amounts; such indemnification will no longer be provided. This change will serve to increase the shipowner's effective liability limit. Currently, for example, a shipowner having a liability limit of $14 million can have that limit effectively reduced to $8.33 million by reason of the indemnity provided to the shipowner by the Fund. FC was adopted in 1971 on the premise that it was necessary, not only to ensure that full compensation be available to oil pollution victims, but also to give relief to shipowners for a portion of the burden imposed on them by CLC. The same consideration which led to the substantial increase in the shipowner's liability limitation under CLC Protocol (greater insurance capacity, inflation, increased costs of response, etc.) led to the conclusion that this benefit to the shipowner should be terminated by FC Protocol.

Article 6. Establishes the same limitation period for bringing actions as the 1984 CLC. (See discussions above under Article VII 1984 CLC.)* (Art. 8, FCP)

Article 7. Establishes rules regarding courts having jurisdiction over the Fund for compensation claims:

—Actions against the Fund may only be brought in courts competent to hear claims under the 1984 CLC. A competent court having an action under 1984 CLC before it shall have exclusive ju-

risdictional competence over the related action against the Fund, unless such court is in a State not Party to the 1984 FC, in which case an action may be brought against the Fund in the United Kingdom or in a State Party in which an action could have been brought against the vessel owned under 1984 CLC.* (Art. 9, FCP)

—The Fund shall have the right to intervene in actions brought under CLC and, if properly and timely notified of such actions, the Fund shall be bound by their outcome even if it has not actually intervened.

Article 8. Judgments against the Fund rendered in one State Party are enforceable in other State Parties, in the same manner as provided for in 1984 CLC. (See discussion above under Art. X 1984 CLC.)* (Art. 10, FCP)

Article 9. Grants the Fund subrogation rights against the owner and his guarantor and ensures that the Fund has a right of subrogation against other persons no less favorable than that of an insurer of a person to whom compensation has been paid.* (Art. 11, FCP)

Article 10. Annual contributions to the Fund shall be made in respect of each Party by any person who, in a particular calendar year, receives, in quantities exceeding 150,000 tons, contributing oil carried by sea to ports and installations of that Party, or receives such oil at installations of the Party after the oil has first been carried by sea and unloaded at ports or installations of a non-Party.* (Art. 12, FCP)

Article 11. Deleted (Art. 13, FCP). Article 11 of the FC established rules for the intital contributions payable when the 1971 FC enters into force for a Party; initial contribution will no longer be required. Initial contributions were required under FC to enable the expeditious establishment of the Organization's administrative machinery. In accordance with a resolution adopted by the 1984 Conference, it is expected that the current Fund Director and his staff and facilities will provide, on a reimbursable basis, services to establish the new Organization, and indeed to provide Secretariat services for that Organization. Reimbursement will be provided from annual contributions from parties to FC Protocol. Consequently, there is no need for initial contributions under this Protocol.

Article 12. Establishes rules regarding the calculation of the necessary annual contributions to support the Fund.* (Art. 14 FCP)

Article 13. Establishes rules regarding contribution arrearages, obligations of Parties to ensure payments by persons responsible for payments on their behalf, and recovery of arrearages by the Fund Director.* (Art. 15, FCP)

Article 14. A Party may declare itself bound to fulfull any obligations incumbent on persons liable to make contributions to the Fund; a State so doing shall, with respect to the obligation assumed, waive immunity it would otherwise be entitled to invoke in an action brought before a competent court.

Article 15. Obligates Parties to ensure that the Fund is aware of persons who are liable to make contributions on behalf of such States, together with the amounts of oil received by such persons. Should a Party fail to fulfill its obligations and the Fund thereby suffers a loss, the Party shall be liable to the Fund in the amount of the loss.* (Art. 16, FCP)

Article 16. Provides that the Fund shall have an Assembly and a Director. The Protocol has abolished the Executive Committee. Experience has demonstrated that the Executive Committee, originally intended to perform executive functions for the Fund Organization, has not operated in the manner intended. The Fund Assembly has not delegated budgetary functions to it; attendance at its meetings have not reflected its formal membership; and its membership lacked continuity, which was particularly important in carrying out its claims approval function. It was felt that the nature of the Fund Organization's work is such that permanent or subsidiary bodies established under Article 18.9 of the Convention would be more, capable of performing necessary detailed functions on behalf of the Assembly. It should be noted that Article 18.2 of the Protocol amends Article 18.9 of the existing Convention specifically to allow for such a delegation of functions and to assure that the membership of the bodies so established reflect not only an equitable geographical distribution, but also appropriate representation by the Fund's major contributions.* (Art. 17, FCP)

Article 17. The Assembly consists of all Parties.

Article 18. Established the functions of the Assembly, including approval of claims settlements and claims compensation apportionment, instruction of the Director on matters of administration, and establishment of subsidiary bodies as necessary (with membership to reflect geographic distribution and adequate representation of the largest contributing States).* (Art. 18, FCP)

Article 19. Calls for annual meetings of the Assembly called by the Director, and extraordinary meetings called by the Director on the request of one-third of the Assembly members, or on the Director's own initiative after consultation with the Assembly Chairman.* (Art. 19, FCP)

Article 20. A majority of Assembly members constitutes a quorum.

Articles 21 through 27. Deleted (Article 20, FCP). Articles 21 through 27 deal with the establishment and operation of the Fund Executive Committee, which does not exist under the 1984 FC Protocol.

Article 28. Declares the Director to be the Fund's legal representative and, together with the necessary staff, to comprise the Fund's Secretariat.

Article 29. Declares the Director to be the chief administrative officer of the Fund and assigns certain duties to him.* (Art. 21, FCP)

Article 30. Charges the Director and other Fund staff members to act as international officials, wholly independent of the direction of their home goverments, and requires Parties to respect that status.

Article 31. Requires all Fund expenses, save for expenses of delegations or other representatives of Parties, to be borne by the Fund.* (Art. 22, FCP)

Article 32. Establishes basic rules regarding voting in the Assembly; in most cases, decisions are by a simple majority, with each member having one vote.* (Art. 23, FCP)

Article 33. Specifies situations in which decisions require a two-thirds majority.* (Art. 24, FCP)

Article 34. Declares that the Fund shall not be subject to taxation or duties; persons contributing to the Fund or receiving damage compensation from it are subject to their applicable national legislation.

Article 35. Compensation claims arising after the date of the 1984 Protocol's entry into force may not be brought against the Fund until 120 days after that date.* (Art. 25, FCP)

Article 36. The IMO Secretary-General shall convene the Assembly no more than 30 days after the 1984 FC Protocol enters into force.

Article 36 bis. Establishes transitional provisions, for the period between the Protocol's entry into force and the date on which denunciations must be made as provided for in 1984 FC Protocol Article 31:

—The Fund will pay for compensation for pollution damage only if and to the extent that such damage has not been fully compensated under 1969 CLC, 1971 FC and 1984 CLC. In States Party to the 1984 FC Protocol, but not Party to 1971 FC, compensation is to be paid by the Fund only if and to the extent that there would not have been full and adequate compensation had 1969 CLC, 1971 FC, and 1984 CLC been in force for that State.

—In computing the amount of compensation (up to the limit of 135 million SDRs or 200 million SDRs, as appropriate) to be paid by the Fund, there shall also be considered any amounts paid under the 1969 CLC and amounts paid, or deemed to have been paid, under 1971 FC.* (Art. 26, FCP)

Article 36 ter. Establishes certain administrative rules regarding operation of the Fund during the period that both the 1971 FC and the 1984 Protocol are in force. The Director of the 1971 Fund shall be the Director of the new Fund except in cases where a conflict of interest arises. In such cases the Chairman of the Assembly serves as the representative of the new Fund.* (Art. 26, FCP)

Article 36 quarter. Declares the final clauses of the 1984 Convention to be Articles 28 through 39 of the 1984 Protocol.

1984 FC Protocol Articles not amending parts of the 1971 FC. The following articles, including the final clauses referred to in Article 36 quarter above, do not, in and of themselves, amend provisions of 1971 FC (notwithstanding that Articles 28 through 39, 1984 FC Protocol effectively replace Articles 37 through 48, 1971 FC):

Article 27. Declares that, as between Parties to the Protocol, the 1971 FC and the 1984 FC Protocol shall be read together as one instrument and that Articles 1 through 36 quarter of the 1971 FC, as amended by the Protocol, shall be known as the 1984 Fund Convention.

Article 28. Deals with signature and ratification:

—Open for signature December 1, 1984 to November 30, 1985, for States that have signed the 1984 CLC Protocol.

—States become Parties by (a) signature followed by ratification, acceptance, approval or (b) accession, provided they have also ratified, accepted, approved or acceded to the 1984 CLC Protocol.

—Parties not also Parties to the 1971 FC shall be bound by the 1971 FC as amended with respect to other Parties to 1984 FC Protocol, but not with respect to States that are Parties to the 1971 FC but not Parties to 1984 FC Protocol.

Article 29. States which have deposited ratifications to the 1984 FC Protocol shall report to the IMO Secretary-General, prior to the Protocol's entry into force for those States, which persons shall make contributions on behalf of such States and the amounts of oil received by them. During the transitional period, the Fund Director shall make such reports respecting Parties to 1984 FC Protocol to the Secretary-General.

Article 30. Entry into force provisions:

—1984 FC Protocol will enter into force twelve months after appropriate instruments have been deposited with the Secretary-General on behalf of at least eight States, which, together, received at last 600 million tons of contributing oil during the preceding calendar year; provided, however, that 1984 FC Protocol may not enter into force before the 1984 CLC Protocol.

—A State depositing the appropriate instrument may declare that it shall not take effect until the date, specified in Article 31, on which Parties to the 1971 FC that have also ratified the 1984 FC Protocol must denounce the 1969 CLC and 1971 FC. A similar declaration made with respect to the 1984 CLC Protocol shall be deemed applicable to the 1984 FC Protocol as well. Declarations may be withdrawn.

—The Protocol will enter into force 12 months after instrument deposit for any State that makes such a deposit after the entry into force conditions have been fulfilled.

Article 31. Establishes the obligation of specified States which are party to 1969 CLC and 1971 FC to denounce those Conventions. States which must do so are Parties to 1984 FC Protocol and other States which have deposited instruments of ratification to 1984 FC Protocol. Denunciation is required within six months after following conditions are met: (1) those Parties and other States are at least eight in number; and (2) the total of the contributing oil received in those Parties and other States during the preceding calendar year is at least 750 million metric tons. The required denunciations take effect 12 months following the expiry of the referenced six month period.

Article 32. IMO may convene a Conference to revise or amend the 1984 FC, and it shall convene a Conference of Contracting States for that purposes, at the request of at least one-third of them.

Article 33. Establishes a system for revising compensation limits, essentially identical in form and limitation to that established for the 1984 CLC Protocol under Article 15 of that instrument.

Article 34. Establishes rules for denunciations:

—Denunciations may be made any time after the Protocol enters into force for a Party; they are to be deposited with the IMO Secretary-General, to take effect 12 months (or such longer time as specified therein) later.

—Denunciation of the 1984 CLC Protocol is deemed a denunciation of the 1984 FC Protocol.

—A failure to denounce the 1969 CLC or 1971 FC, as called for in Article 31, shall be deemed a denunciation of the 1984 FC Protocol, to take effect 12 months after the expiry of the six-month period provided for in that Article.

—A Party's obligation to make contributions to the Fund continues, with respect to any incident occurring before the denunciation of this Protocol takes effect.

Article 35. Provides for extraordinary sessions of the Assembly in the event that a Party's denunciation may significantly increase the level of contributions of the remaining Parties. If the Assembly determines that such a denunciation will result in a significant increase in the contribution level for the remaining States, such remaining States may also denounce the Protocol, not less than 120 days before the effective date of the denunciation in question, to take effect on the same date as that denunciation.

Article 36. The Protocol shall cease to be in force on the date on which the number of Parties falls below three, but all States bound by the Protocol on the day before that date shall remain bound by it, solely for the purposes of winding up the affairs of the Fund.

Article 37. Declares that, although the Protocol may cease to be in force, the Fund shall continue to be responsible for compensation of an incident occurring before it ceased to be in force and shall be entitled to exercise rights respecting contributions necessary to wind up the Fund's affairs.

Article 38. Establishes responsibilities of the Secretary-General as depositary.

Article 39. Establishes the official languages of the original text: Arabic, Chinese, English, French, Russian and Spanish.

Attachment I: To Be Appended to the Instrument of Ratification of the CLC Protocol

The United States understands the defintion of the term "pollution damage" contained in Article I, paragraph 6, of the International Convention on Civil Liability for Oil Pollution Damage, 1969, as amended by Article 2, paragraph 3, of the 1984 Protocol thereto, to exclude compensation assessed on the basis of abstract quantifications of damage calculated in accordance with theoretical models as provided for in the resolution of the Assembly of the International Oil Pollution Compensation Fund of October 10, 1980.

The United States further understands that the words "cost of reasonable measures of reinstatement actually . . . to be undertaken", in Article I, paragraph 6(a), of said Convention, so amended, apply only to situations in which actual impairment of the environment has been established and actual plans and preparations for such reasonable measures of reinstatement have been completed with a demonstrated intention to carry them out expeditiously, or in a currently planned phased in manner. The reasonableness of the measures to be undertaken should be determined taking into account such factors as technical feasibility, harmful side effects, compatibility with or duplication of expected natural regeneration and the extent to which such measures at some point may be expected to become redundant or disproportionately expensive.

Finally, the United States understands that liability for pollution damage, including costs of preventive measures, extends only to pollution damage resulting from the particular incident for which such liability is established, not for any other incident or purpose.

TO BE APPENDED TO THE INSTRUMENT OF RATIFICATION OF THE FC PROTOCOL

The United States understands the definition of the term "pollution damage" contained in Article 1, paragraph 2 of the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971, as amended by Article 2, paragraph 3 of the 1984 Protocol thereto, to exclude compensation payable on the basis of abstract quantifications of damage calculated in accordance with theoretical models.

The United States further understands that the words "costs of reasonable measures of reinstatement actually . . . to be undertaken", in Article I, paragraph 6(a), of the International Convention on Civil Liability for Oil Pollution Damage, 1969, as amended by the 1984 Protocol thereto, apply to the meaning of "pollution damage" as used in the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971, as amended by the 1984 Protocol thereto, by virtue of Article 1, paragraph 2, of the said 1971 Convention as amended by Article 2, paragraph 3, of the 1984 Protocol thereto. As a consequence, the understanding of the United States concerning the application and meaning of those words in respect of said 1969 Convention, as amended by the 1984 Protocol thereto, applies to the meaning of "pollution damage" as used in said 1971 Convention, as amended by the 1984 Protocol thereto.

Finally, the United States understands that compensation payable by the International Oil Pollution Compensation Fund for pollution damage, including costs of preventive measures, would be available only in respect of pollution damage resulting from the particular incident for which such compensation is allowed, not for any other incident or purpose.

ATTACHMENT II: TO BE APPENDED TO THE INSTRUMENT OF RATIFICATION OF THE CLC PROTOCOL

In accordance with Article 13 of the Protocol of 1984 to Amend the International Convention on Civil Liability for Oil Pollution Damage, 1969, the United States declares that its instrument of ratification of that Protocol shall be deemed not to be effective for the purpose of said Article 13 until the end of the six-month period described in Article 31 of the Protocol of 1984 to Amend the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971.

TO BE APPENDED TO THE INSTRUMENT OF RATIFICATION OF THE FC PROTOCOL

In accordance with Article 30 of the Protocol of 1984 to Amend the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971, the United States declares that its instrument of ratification of that Protocol shall not take effect for the purpose of said Article 30 until the end of the six-month period described in Article 31 of that Protocol.

Final Act of the International Conference on Liability and Compensation for Damage in Connexion With the Carriage of Certain Substances by Sea

1. In accordance with Article 3(b) of the Convention on the International Maritime Organization the Council of the Organization, with the approval of the Assembly, decided to convene an international conference on liability and compensation for damage in connexion with the carriage of certain substances by sea. The purpose of the conference was to consider the adoption of a treaty instrument on questions of liability and compensation for damage in connexion with the carriage of noxious and hazardous substances by sea and the adoption of appropriate treaty instruments to revise the International Convention on Civil Liability for Oil Pollution Damage, 1969 and the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971.

2. The Conference was held at the Headquarters of the International Maritime Organization from 30 April to 25 May 1984.

3. Representatives of 69 States participated in the Conference, namely the representatives of: Algeria, Argentina, Australia, Bahamas, Bangladesh, Belgium, Brazil, Bulgaria, Cameroon, Canada, Chile, China, Colombia, Congo, Cuba, Cyprus, Denmark, Djibouti, Ecuador, Finland, France, Gabon, Gambia, German Democratic Republic; Germany, Federal Republic of; Ghana, Greece, Honduras, India, Indonesia, Ireland, Italy, Ivory Coast, Jamaica, Japan, Kenya, Kuwait, Lebanon, Liberia, Malaysia, Mexico, Monaco, Morocco, Netherlands, New Zealand, Nicaragua, Nigeria, Norway, Panama, Peru, Philippines, Poland, Portugal, Republic of Korea, Romania, Singapore, Spain, Sweden, Switzerland, Thailand, Trinidad and Tobago, Turkey, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Venezuela, and Zaire.

4. The States listed below sent observers to the Conference: Oman and Yugoslavia.

5. Representatives of the following bodies of the United Nations attended the Conference: Economic Commission for Europe (ECE), and United Nations Conference on Trade and Development (UNCTAD).

6. The inter-governmental organizations listed below sent observers to the Conference:

Commission of the European Communities (EEC);

International Institute for the Unification of Private Law (UNIDROIT);

Central Office for International Railway Transport (OCTI);

International Oil Pollution Compensation Fund (IOPC Fund); and

Helsinki Commission (Helcom).

7. The following non-governmental international organizations sent observers to the Conference:

International Chamber of Shipping (ICS);

International Union of Marine Insurance (IUMI);

International Chamber of Commerce (ICC);

International Association of Lighthouse Authorities (IALA);
International Maritime Committee (IMC);
International Association of Ports and Harbors (IAPH);
Baltic and International Maritime Conference (BIMCO);
International Law Association (ILA);
European Council of Chemical Manufacturers' Federations (CEFIC);
Latin American Shipowners' Association (LASA);
Oil Companies International Marine Forum (OCIMF);
European Tugowners Association (ETA);
International Shipowners' Association (INSA);
Friends of the Earth International (FOE);
International Association of Producers of Insurance and Reinsurance (BIPAR);
International Federation of Shipmasters' Association (IFSMA);
International Salvage Union (ISU);
Oil Industry International Exploration and Production Forum (E and P Forum);
International Association of Independent Tanker Owners (Intertanko);
International Group of P and I Associations (P and I);
International Tanker Owners Pollution Federation Limited (ITOPF);
International Union for Conservation of Nature and Natural Resources (IUCN);
Society of International Gas Tanker and Terminal Operators (SIGTTO); and
Advisory Committee on Pollution of the Sea (ACOPS).

8. His Excellency Mr. Francisco Cuevas-Cancino, Head of the delegation of Mexico, was elected President of the Conference. The Vice-Presidents of the Conference were:

Mr. Shem Zhaoqi (China);
Mr. C. Douay (France);
Mr. R. Tchibota-Souamy (Gabon);
Mr. I. Perrakis (Greece);
Mr. B.K. Rao (India);
Mr. A.R.M. All-Yagout (Kuwait);
Mr. G. Ivanov (USSR); and
Rear Admiral B.F. Hollingsworth (United States).

9. The Secretary-General of the Conference was Mr. C.P. Srivastava, Secretary-General of the Organization. Mr. T.A. Mensah, Assistant Secretary-General of the Organization and Mr. T.S. Busha, Senior Deputy Director, Legal Affairs and External Relations Division, served as Executive Secretary and Deputy Executive Secretary, respectively, of the Conference.

10. The Conference established two Committees of the Whole. Committee of the Whole I was requested to consider draft provisions for an International Convention on Liability and Compensation in Connexion with the Carriage of Noxious and Hazardous Substances by Sea, and Committee of the Whole II was requested to consider draft provisions for revising the International Convention on Civil Liability for Oil Pollution Damage, 1969 and the International Convention on the Establishment of an International

Fund for Compensation for Oil Pollution Damage, 1971. The Conference also established a Committee on Final Clauses and a Drafting Committee. A Credentials Committee was appointed to examine the credentials of representatives attending the Conference.

11. The officers elected for the Committees were as follows:

Committee of the Whole I: Chairman: Dr. F.L. Wiswall (Liberia); Vice-Chairmen: Mr. A.H.E. Popp (Canada) and Mr. A. Alaoui (Morocco).

Committee of the Whole II: Chairman: Mr. M. Jacobsson (Sweden); Vice-Chairmen: Professor H. Tanikawa (Japan) and Mr. F.A. Ehigiator (Nigeria).

Committee on Final Clauses: Chairman: Mr. J.R. Perrett (United Kingdom); Vice-Chairmen: Mr. E. Fanara (Italy) and Mr. Jae-Gook Suh (Republic of Korea).

Drafting Committee: Chairman: Mr. R. Cleton (Netherlands); Vice-Chairmen: Miss A. de Clermont-Tonnerre (France) and Mr. V. Mednikov (USSR).

Credentials Committee: Chairman: Mr. M.A.S. Landale (Australia).

12. The Conference used as the basis of its work the following documents prepared by the Legal Committee of the Organization:

A draft Convention on Liability and Compensation in Connexion with the Carriage of Noxious and Hazardous Substances by Sea;

A draft Protocol to the International Convention on Civil Liability for Oil Pollution Damage, 1969;

A draft Protocol to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971;

A draft resolution on the issue and recognition of certificates issued in accordance with the International Convention on Civil Liability for Oil Pollution Damage, 1969 and the International Convention on Civil Liability for Oil Pollution Damage, 1984.

13. The Conference also had before it submissions from Governments and interested organizations containing comments and observations on, and suggested amendments to, the draft texts prepared by the Legal Committee.

14. As a result of its deliberations, as recorded in the summary records of the plenary meetings, the meetings of the Committees of the Whole, and of the meetings of the Committee on Final Clauses, and in the reports of the other Committees, the Conference adopted the following instruments:

(a) Protocol of 1984 to amend the International Convention on Civil Liability for Oil Pollution Damage, 1969.

(b) Protocol of 1984 to amend the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971.

15. The Conference also adopted the following resolutions which are reproduced in the attachments to this Final Act:

1. Resolution on the Draft Convention on Liability and Compensation in Connexion with the Carriage of Noxious and Hazardous Substances by Sea.

2. Resolution on the Recognition of Certificates Issued in accordance with the International Convention on Civil Liability for Oil Pollution Damage, 1969, and the International Convention on Civil Liability for Oil Pollution Damage, 1984.

3. Resolution concerning the Establishment of the International

4. Resolution on the Preparation of Authentic Texts.

Oil Pollution Compensation Fund, 1984.

16. This Final Act is established in a single original text in the Arabic, Chinese, English, French, Russian and Spanish languages. The original text is to be deposited with the Secretary-General of the International Maritime Organization.

17. The Secretary-General shall send certified copies of this Final Act and certified copies of the authentic texts of the adopted instruments to the Governments of the States invited to be represented at the Conference, in accordance with the wishes of those Governments.

18. The Conference requested the Secretary-General to prepare the authentic texts in Arabic, Chinese, English, French, Russian and Spanish of:

(a) the International Convention on Civil Liability for Oil Pollution Damage, 1984 and

(b) the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1984.

19. The Conference requested the Secretary-General in preparing the authentic texts of the instruments referred to in paragraph 18 to follow the guidelines set forth in resolution 4 of the Conference.

20. The texts referred to in paragraph 18 are to be circulated to the Governments referred to in paragraph 17 of this Final Act, in accordance with the wishes of those Governments.

بروتوكول عام ١٩٨٤ لتعديل الاتفاقية الدولية بشأن المسؤولية المدنية عن الاضرار الناجمة عن التلوث النفطي، لعام ١٩٦٩

修正1969年国际油污损害民事责任公约的
1984年议定书

PROTOCOL OF 1984 TO AMEND
THE INTERNATIONAL CONVENTION ON CIVIL LIABILITY
FOR OIL POLLUTION DAMAGE, 1969

PROTOCOLE DE 1984 MODIFIANT
LA CONVENTION INTERNATIONALE DE 1969 SUR
LA RESPONSABILITE CIVILE POUR LES DOMMAGES DUS A
LA POLLUTION PAR LES HYDROCARBURES

ПРОТОКОЛ 1984 ГОДА ОБ ИЗМЕНЕНИИ
МЕЖДУНАРОДНОЙ КОНВЕНЦИИ О ГРАЖДАНСКОЙ ОТВЕТСТВЕННОСТИ
ЗА УЩЕРБ ОТ ЗАГРЯЗНЕНИЯ НЕФТЬЮ 1969 ГОДА

PROTOCOLO DE 1984 QUE ENMIENDA EL
CONVENIO INTERNACIONAL SOBRE RESPONSABILIDAD CIVIL
NACIDA DE DAÑOS DEBIDOS A CONTAMINACION
POR HIDROCARBUROS, 1969

PROTOCOL OF 1984 TO AMEND THE INTERNATIONAL CONVENTION ON CIVIL LIABILITY FOR OIL POLLUTION DAMAGE, 1969

THE STATES PARTIES TO THE PRESENT PROTOCOL,

CONSIDERING that it is desirable to amend the International Convention on Civil Liability for Oil Pollution Damage, done at Brussels on 29 November 1969, to provide for improved scope and enhanced compensation,

RECOGNIZING that special provisions are necessary in connexion with the introduction of corresponding amendments to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971,

HAVE AGREED as follows:

Article 1

The Convention which the provisions of this Protocol amend is the International Convention on Civil Liability for Oil Pollution Damage, 1969, hereinafter referred to as the "1969 Liability Convention". For States Parties to the Protocol of 1976 to the 1969 Liability Convention, such reference shall be deemed to include the 1969 Liability Convention as amended by that Protocol.

Article 2

Article I of the 1969 Liability Convention is amended as follows:

1. Paragraph 1 is replaced by the following text:

   1. "Ship" means any sea-going vessel and sea-borne craft of any type whatsoever constructed or adapted for the carriage of oil in bulk as cargo, provided that a ship capable of carrying oil and other cargoes shall be regarded as a ship only when it is actually carrying oil in bulk as cargo and during any voyage following such carriage unless it is proved that it has no residues of such carriage of oil in bulk aboard.

2. Paragraph 5 is replaced by the following text:

   5. "Oil" means any persistent hydrocarbon mineral oil such as crude oil, fuel oil, heavy diesel oil and lubricating oil, whether carried on board a ship as cargo or in the bunkers of such a ship.

3. Paragraph 6 is replaced by the following text:

6. "Pollution damage" means:

(a) loss or damage caused outside the ship by contamination resulting from the escape or discharge of oil from the ship, wherever such escape or discharge may occur, provided that compensation for impairment of the environment other than loss of profit from such impairment shall be limited to costs of reasonable measures of reinstatement actually undertaken or to be undertaken;

(b) the costs of preventive measures and further loss or damage caused by preventive measures.

4. Paragraph 8 is replaced by the following text:

8. "Incident" means any occurrence, or series of occurrences having the same origin, which causes pollution damage or creates a grave and imminent threat of causing such damage.

5. Paragraph 9 is replaced by the following text:

9. "Organization" means the International Maritime Organization.

6. After paragraph 9 a new paragraph is inserted reading as follows:

10. "1969 Liability Convention" means the International Convention on Civil Liability for Oil Pollution Damage, 1969. For States Parties to the Protocol of 1976 to that Convention, the term shall be deemed to include the 1969 Liability Convention as amended by that Protocol.

Article 3

Article II of the 1969 Liability Convention is replaced by the following text:

This Convention shall apply exclusively:

(a) to pollution damage caused:

(i) in the territory, including the territorial sea, of a Contracting State, and

(ii) in the exclusive economic zone of a Contracting State, established in accordance with international law, or, if a Contracting State has not established such a zone, in an area beyond and adjacent to the territorial sea of that State determined by that State in accordance with international law and extending not more than 200 nautical miles from the baselines from which the breadth of its territorial sea is measured;

(b) to preventive measures, wherever taken, to prevent or minimize such damage.

Article 4

Article III of the 1969 Liability Convention is amended as follows:

1. Paragraph 1 is replaced by the following text:

1. Except as provided in paragraphs 2 and 3 of this Article, the owner of a ship at the time of an incident, or where the incident consists of a series of occurrences at the time of the first such occurrence, shall be liable for any pollution damage caused by the ship as a result of the incident.

2. Paragraph 4 is replaced by the following text:

4. No claim for compensation for pollution damage may be made against the owner otherwise than in accordance with this Convention. Subject to paragraph 5 of this Article, no claim for compensation for pollution damage under this Convention or otherwise may be made against:

(a) the servants or agents of the owner or the members of the crew;

(b) the pilot or any other person who, without being a member of the crew, performs services for the ship;

(c) any charterer (howsoever described, including a bareboat charterer), manager or operator of the ship;

(d) any person performing salvage operations with the consent of the owner or on the instructions of a competent public authority;

(e) any person taking preventive measures;

(f) all servants or agents of persons mentioned in subparagraphs (c), (d) and (e);

unless the damage resulted from their personal act or omission, committed with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.

Article 5

Article IV of the 1969 Liability Convention is replaced by the following text:

When an incident involving two or more ships occurs and pollution damage results therefrom, the owners of all the ships concerned, unless exonerated under Article III, shall be jointly and severally liable for all such damage which is not reasonably separable.

Article 6

Article V of the 1969 Liability Convention is amended as follows:

1. Paragraph 1 is replaced by the following text:

1. The owner of a ship shall be entitled to limit his liability under this Convention in respect of any one incident to an aggregate amount calculated as follows:

(a) 3 million units of account for a ship not exceeding 5,000 units of tonnage;

(b) for a ship with a tonnage in excess thereof, for each additional unit of tonnage, 420 units of account in addition to the amount mentioned in subparagraph (a);

provided, however, that this aggregate amount shall not in any event exceed 59.7 million units of account.

2. Paragraph 2 is replaced by the following text:

2. The owner shall not be entitled to limit his liability under this Convention if it is proved that the pollution damage resulted from his personal act or omission, committed with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.

3. Paragraph 3 is replaced by the following text:

3. For the purpose of availing himself of the benefit of limitation provided for in paragraph 1 of this Article the owner shall constitute a fund for the total sum representing the limit of his liability with the Court or other competent authority of any one of the Contracting States in which action is brought under Article IX or, if no action is brought, with any Court or other competent authority in any one of the Contracting States in which an action can be brought under Article IX. The fund can be constituted either by depositing the sum or by producing a bank guarantee or other guarantee, acceptable under the legislation of the Contracting State where the fund is constituted, and considered to be adequate by the Court or other competent authority.

4. Paragraph 9 is replaced by the following text:

9(a). The "unit of account" referred to in paragraph 1 of this Article is the Special Drawing Right as defined by the International Monetary Fund. The amounts mentioned in paragraph 1 shall be converted into national currency on the basis of the value of that currency by reference to the Special Drawing Right on the date of the constitution of the fund referred to in paragraph 3. The value of the national currency, in terms of the

Special Drawing Right, of a Contracting State which is a member of the International Monetary Fund, shall be calculated in accordance with the method of valuation applied by the International Monetary Fund in effect on the date in question for its operations and transactions. The value of the national currency, in terms of the Special Drawing Right, of a Contracting State which is not a member of the International Monetary Fund, shall be calculated in a manner determined by that State.

9(b). Nevertheless, a Contracting State which is not a member of the International Monetary Fund and whose law does not permit the application of the provisions of paragraph 9(a) may, at the time of ratification, acceptance, approval of or accession to this Convention or at any time thereafter, declare that the unit of account referred to in paragraph 9(a) shall be equal to 15 gold francs. The gold franc referred to in this paragraph corresponds to sixty-five and a half milligrammes of gold of millesimal fineness nine hundred. The conversion of the gold franc into the national currency shall be made according to the law of the State concerned.

9(c). The calculation mentioned in the last sentence of paragraph 9(a) and the conversion mentioned in paragraph 9(b) shall be made in such manner as to express in the national currency of the Contracting State as far as possible the same real value for the amounts in paragraph 1 as would result from the application of the first three sentences of paragraph 9(a). Contracting States shall communicate to the depositary the manner of calculation pursuant to paragraph 9(a), or the result of the conversion in paragraph 9(b) as the case may be, when depositing an instrument of ratification, acceptance, approval of or accession to this Convention and whenever there is a change in either.

5. Paragraph 10 is replaced by the following text:

10. For the purpose of this Article the ship's tonnage shall be the gross tonnage calculated in accordance with the tonnage measurement regulations contained in Annex I of the International Convention on Tonnage Measurement of Ships, 1969.

6. The second sentence of paragraph 11 is replaced by the following text:

Such a fund may be constituted even if, under the provisions of paragraph 2, the owner is not entitled to limit his liability, but its constitution shall in that case not prejudice the rights of any claimant against the owner.

Article 7

Article VII of the 1969 Liability Convention is amended as follows:

1. The first two sentences of paragraph 2 are replaced by the following text:

A certificate attesting that insurance or other financial security is in force in accordance with the provisions of this Convention shall be issued to each ship after the appropriate authority of a Contracting State has determined that the requirements of paragraph 1 have been complied with. With respect to a ship registered in a Contracting State such certificate shall be issued or certified by the appropriate authority of the State of the ship's registry; with respect to a ship not registered in a Contracting State it may be issued or certified by the appropriate authority of any Contracting State.

2. Paragraph 4 is replaced by the following text:

4. The certificate shall be carried on board the ship and a copy shall be deposited with the authorities who keep the record of the ship's registry or, if the ship is not registered in a Contracting State, with the authorities of the State issuing or certifying the certificate.

3. The first sentence of paragraph 7 is replaced by the following text:

Certificates issued or certified under the authority of a Contracting State in accordance with paragraph 2 shall be accepted by other Contracting States for the purposes of this Convention and shall be regarded by other Contracting States as having the same force as certificates issued or certified by them even if issued or certified in respect of a ship not registered in a Contracting State.

4. In the second sentence of paragraph 7 the words "with the State of a ship's registry" are replaced by the words "with the issuing or certifying State".

5. The second sentence of paragraph 8 is replaced by the following text:

In such case the defendant may, even if the owner is not entitled to limit his liability according to Article V, paragraph 2, avail himself of the limits of liability prescribed in Article V, paragraph 1.

Article 8

Article IX of the 1969 Liability Convention is amended as follows:

Paragraph 1 is replaced by the following text:

1. Where an incident has caused pollution damage in the territory, including the territorial sea or an area referred to in Article II, of one or more Contracting States or preventive measures have been taken to prevent or

minimize pollution damage in such territory including the territorial sea or area, actions for compensation may only be brought in the Courts of any such Contracting State or States. Reasonable notice of any such action shall be given to the defendant.

Article 9

After Article XII of the 1969 Liability Convention two new Articles are inserted as follows:

Article XII bis

Transitional provisions

The following transitional provisions shall apply in the case of a State which at the time of an incident is a Party both to this Convention and to the 1969 Liability Convention:

(a) where an incident has caused pollution damage within the scope of this Convention, liability under this Convention shall be deemed to be discharged if, and to the extent that, it also arises under the 1969 Liability Convention;

(b) where an incident has caused pollution damage within the scope of this Convention, and the State is a Party both to this Convention and to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971, liability remaining to be discharged after the application of subparagraph (a) of this Article shall arise under this Convention only to the extent that pollution damage remains uncompensated after application of the said 1971 Convention;

(c) in the application of Article III, paragraph 4, of this Convention the expression "this Convention" shall be interpreted as referring to this Convention or the 1969 Liability Convention, as appropriate;

(d) in the application of Article V, paragraph 3, of this Convention the total sum of the fund to be constituted shall be reduced by the amount by which liability has been deemed to be discharged in accordance with subparagraph (a) of this Article.

Article XII ter

Final clauses

The final clauses of this Convention shall be Articles 12 to 18 of the Protocol of 1984 to amend the 1969 Liability Convention. References in this Convention to Contracting States shall be taken to mean references to the Contracting States of that Protocol.

Article 10

The model of a certificate annexed to the 1969 Liability Convention is replaced by the model annexed to this Protocol.

Article 11

1. The 1969 Liability Convention and this Protocol shall, as between the Parties to this Protocol, be read and interpreted together as one single instrument.

2. Articles I to XII ter, including the model certificate, of the 1969 Liability Convention as amended by this Protocol shall be known as the International Convention on Civil Liability for Oil Pollution Damage, 1984 (1984 Liability Convention).

FINAL CLAUSES

Article 12

Signature, ratification, etc.

1. This Protocol shall be open for signature at London from 1 December 1984 to 30 November 1985 by all States.

2. Subject to paragraph 4, any State may become a Party to this Protocol by:

(a) signature subject to ratification, acceptance or approval followed by ratification, acceptance or approval; or

(b) accession.

3. Ratification, acceptance, approval or accession shall be effected by the deposit of a formal instrument to that effect with the Secretary-General of the Organization.

4. Any Contracting State to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971, hereinafter referred to as the 1971 Fund Convention, may ratify, accept, approve or accede to this Protocol only if it ratifies, accepts, approves or accedes to the Protocol of 1984 to amend that Convention at the same time, unless it denounces the 1971 Fund Convention to take effect on the date when this Protocol enters into force for that State.

5. A State which is a Party to this Protocol but not a Party to the 1969 Liability Convention shall be bound by the provisions of the 1969 Liability Convention as amended by this Protocol in relation to other States Parties hereto, but shall not be bound by the provisions of the 1969 Liability Convention in relation to States Parties thereto.

6. Any instrument of ratification, acceptance, approval or accession deposited after the entry into force of an amendment to the 1969 Liability Convention as amended by this Protocol shall be deemed to apply to the Convention so amended, as modified by such amendment.

Article 13

Entry into force

1. This Protocol shall enter into force twelve months following the date on which ten States including six States each with not less than one million units of gross tanker tonnage have deposited instruments of ratification, acceptance, approval or accession with the Secretary-General of the Organization.

2. However, any Contracting State to the 1971 Fund Convention may, at the time of the deposit of its instrument of ratification, acceptance, approval or accession in respect of this Protocol, declare that such instrument shall be deemed not to be effective for the purposes of this Article until the end of the six-month period in Article 31 of the Protocol of 1984 to amend the 1971 Fund Convention. A State which is not a Contracting State to the 1971 Fund Convention but which deposits an instrument of ratification, acceptance, approval or accession in respect of the Protocol of 1984 to amend the 1971 Fund Convention may also make a declaration in accordance with this paragraph at the same time.

3. Any State which has made a declaration in accordance with the preceding paragraph may withdraw it at any time by means of notification addressed to the Secretary-General of the Organization. Any such withdrawal shall take effect on the date the notification is received, provided that such State shall be deemed to have deposited its instrument of ratification, acceptance, approval or accession in respect of this Protocol on that date.

4. For any State which ratifies, accepts, approves or accedes to it after the conditions in paragraph 1 for entry into force have been met, this Protocol shall enter into force twelve months following the date of deposit by such State of the appropriate instrument.

Article 14

Revision and amendment

1. A Conference for the purpose of revising or amending the 1984 Liability Convention may be convened by the Organization.

2. The Organization shall convene a Conference of Contracting States for the purpose of revising or amending the 1984 Liability Convention at the request of not less than one-third of the Contracting States.

Article 15

Amendments of limitation amounts

1. Upon the request of at least one-quarter of the Contracting States any proposal to amend the limits of liability laid down in Article V, paragraph 1, of the Convention as amended by this Protocol shall be circulated by the Secretary-General to all Members of the Organization and to all Contracting States.

2. Any amendment proposed and circulated as above shall be submitted to the Legal Committee of the Organization for consideration at a date at least six months after the date of its circulation.

3. All Contracting States to the Convention as amended by this Protocol, whether or not Members of the Organization, shall be entitled to participate in the proceedings of the Legal Committee for the consideration and adoption of amendments.

4. Amendments shall be adopted by a two-thirds majority of the Contracting States present and voting in the Legal Committee, expanded as provided for in paragraph 3, on condition that at least one-half of the Contracting States shall be present at the time of voting.

5. When acting on a proposal to amend the limits, the Committee shall take into account the experience of incidents and in particular the amount of damage resulting therefrom, changes in the monetary values and the effect of the proposed amendment on the cost of insurance. It shall also take into account the relationship between the limits in Article V, paragraph 1, of the Convention as amended by this Protocol and those in paragraph 4 of Article 4 of the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1984.

6(a). No amendment of the limits of liability under this Article may be considered less than five years from the date on which this Protocol was opened for signature nor less than five years from the date of entry into force of a previous amendment under this Article. No amendment under this Article shall be considered before this Protocol has entered into force.

(b). No limit may be increased so as to exceed an amount which corresponds to the limit laid down in the Convention as amended by this Protocol increased by 6 per cent per year calculated on a compound basis from the date on which this Protocol was opened for signature.

(c). No limit may be increased so as to exceed an amount which corresponds to the limit laid down in the Convention as amended by this Protocol multiplied by 3.

7. Any amendment adopted in accordance with paragraph 4 shall be notified by the Organization to all Contracting States. The amendment shall be deemed to have been accepted at the end of a period of eighteen months after the date of notification,

unless within that period not less than one-quarter of the States that were Contracting States at the time of the adoption of the amendment by the Committee have communicated to the Organization that they do not accept the amendment in which case the amendment is rejected and shall have no effect.

8. An amendment deemed to have been accepted in accordance with paragraph 7 shall enter into force eighteen months after its acceptance.

9. All Contracting States shall be bound by the amendment, unless they denounce this Protocol in accordance with Article 16, paragraphs 1 and 2, at least six months before the amendment enters into force. Such denunciation shall take effect when the amendment enters into force.

10. When an amendment has been adopted by the Committee but the eighteen-month period for its acceptance has not yet expired, a State which becomes a Contracting State during that period shall be bound by the amendment if it enters into force. A State which becomes a Contracting State after that period shall be bound by an amendment which has been accepted in accordance with paragraph 7. In the cases referred to in this paragraph, a State becomes bound by an amendment when that amendment enters into force, or when this Protocol enters into force for that State, if later.

Article 16

Denunciation

1. This Protocol may be denounced by any Party at any time after the date on which it enters into force for that Party.

2. Denunciation shall be effected by the deposit of an instrument with the Secretary-General of the Organization.

3. A denunciation shall take effect twelve months, or such longer period as may be specified in the instrument of denunciation, after its deposit with the Secretary-General of the Organization.

4. As between the Parties to this Protocol, denunciation by any of them of the 1969 Liability Convention in accordance with Article XVI thereof shall not be construed in any way as a denunciation of the 1969 Liability Convention as amended by this Protocol.

5. Denunciation of the Protocol of 1984 to amend the 1971 Fund Convention by a State which remains a Party to the 1971 Fund Convention shall be deemed to be a denunciation of this Protocol. Such denunciation shall take effect on the date on which denunciation of the Protocol of 1984 to amend the 1971 Fund Convention takes effect according to Article 34 of that Protocol.

Article 17

Depositary

1. This Protocol and any amendments accepted under Article 15 shall be deposited with the Secretary-General of the Organization.

2. The Secretary-General of the Organization shall:

(a) inform all States which have signed or acceded to this Protocol of:

(i) each new signature or deposit of an instrument together with the date thereof;

(ii) each declaration and notification under Article 13 and each declaration and communication under Article V, paragraph 9, of the 1984 Liability Convention;

(iii) the date of entry into force of this Protocol;

(iv) any proposal to amend limits of liability which has been made in accordance with Article 15, paragraph 1;

(v) any amendment which has been adopted in accordance with Article 15, paragraph 4;

(vi) any amendment deemed to have been accepted under Article 15, paragraph 7, together with the date on which that amendment shall enter into force in accordance with paragraphs 8 and 9 of that Article;

(vii) the deposit of any instrument of denunciation of this Protocol together with the date of the deposit and the date on which it takes effect;

(viii) any denunciation deemed to have been made under Article 16, paragraph 5;

(ix) any communication called for by any Article of this Protocol.

(b) transmit certified true copies of this Protocol to all Signatory States and to all States which accede to this Protocol.

3. As soon as this Protocol enters into force, the text shall be transmitted by the Secretary-General of the Organization to the Secretariat of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations.

Article 18

Languages

This Protocol is established in a single original in the Arabic, Chinese, English, French, Russian and Spanish languages, each text being equally authentic.

DONE AT LONDON, this twenty-fifth day of May one thousand nine hundred and eighty-four.

IN WITNESS WHEREOF the undersigned, being duly authorised by their respective Governments for that purpose, have signed this Protocol.

ANNEX

CERTIFICATE OF INSURANCE OR OTHER FINANCIAL SECURITY IN RESPECT OF CIVIL LIABILITY FOR OIL POLLUTION DAMAGE

Issued in accordance with the provisions of Article VII of the International Convention on Civil Liability for Oil Pollution Damage, 1984.

Name of Ship	Distinctive Number or Letters	Port of Registry	Name and Address of Owner

This is to certify that there is in force in respect of the above-named ship a policy of insurance or other financial security satisfying the requirements of Article VII of the International Convention on Civil Liability for Oil Pollution Damage, 1984.

Type of Security .....

.....

Duration of Security .....

.....

Name and Address of the Insurer(s) and/or Guarantor(s)

Name .....

Address .....

This certificate is valid until .....

Issued or certified by the Government of .....

.....
(Full designation of the State)

At ..... On .....
(Place) (Date)

.....
Signature and Title of issuing or certifying official

Explanatory Notes:

1. If desired, the designation of the State may include a reference to the competent public authority of the country where the certificate is issued.

2. If the total amount of security has been furnished by more than one source, the amount of each of them should be indicated.

3. If security is furnished in several forms, these should be enumerated.

4. The entry "Duration of Security" must stipulate the date on which such security takes effect.

هذه نسخة مصدقة لبروتوكول عام ١٩٨٤ لتعديل الاتفاقية الدولية بشأن المسؤولية المدنية عن الاضرار الناجمة عن التلوث النفطي، لعام ١٩٦٩، الذى تم في لندن في ٢٥ مايو/آيار ١٩٨٤، حيث الاصل مودع لدى الامين العام للمنظمة البحرية الدولية.

此件系1984年5月25日在伦敦签订的修正1969年油污损害民事责任国际公约1984年议定书的认证无误的副本。此件存放在国际海事组织秘书处。

Certified true copy of the Protocol of 1984 to Amend the International Convention on Civil Liability for Oil Pollution Damage, 1969, done at London on 25 May 1984, the original of which is deposited with the Secretary-General of the International Maritime Organization.

Copie certifiée conforme du Protocole de 1984 modifiant la Convention internationale de 1969 sur la responsabilité civile pour les dommages dus à la pollution par les hydrocarbures, fait à Londres le 25 mai 1984, dont le texte original est déposé auprès du Secrétaire général de l'Organisation maritime internationale.

Заверенная подлинная копия Протокола 1984 года об изменении Международной конвенции о гражданской ответственности за ущерб от загрязнения нефтью 1969 года, совершенного в Лондоне 25 мая 1984 года, оригинал которого сдается на хранение Генеральному секретарю Международной морской организации.

Copia auténtica certificada del Protocolo de 1984 destinado a enmendar el Convenio internacional sobre responsabilidad civil nacida de daños debidos a contaminación por hidrocarburos, 1969, hecho en Londres el 25 de mayo de 1984, cuyo original se ha depositado ante el Secretario General de la Organización Marítima Internacional.

نيابة عن الامين العام للمنظمة البحرية الدولية :

代表国际海事组织秘书长：

For the Secretary-General of the International Maritime Organization:

Pour le Secrétaire général de l'Organisation maritime internationale :

За Генерального секретаря Международной морской организации:

Por el Secretario General de la Organización Marítima Internacional:

John Allen

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London,

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بروتوكـــول عام ١٩٨٤ لتعديل الاتفاقية الدوليـــة لانشاء صندوق دولـــى للتعويض عن الاضرار الناجـــمة عن التلوث النفـــطى ، لعام ١٩٧١

修正1971年设立国际油污损害赔偿基金国际公约的1984年议定书

PROTOCOL OF 1984 TO AMEND THE INTERNATIONAL CONVENTION ON THE ESTABLISHMENT OF AN INTERNATIONAL FUND FOR COMPENSATION FOR OIL POLLUTION DAMAGE, 1971

PROTOCOLE DE 1984 MODIFIANT LA CONVENTION INTERNATIONALE DE 1971 PORTANT CREATION D'UN FONDS INTERNATIONAL D'INDEMNISATION POUR LES DOMMAGES DUS A LA POLLUTION PAR LES HYDROCARBURES

ПРОТОКОЛ 1984 ГОДА ОБ ИЗМЕНЕНИИ МЕЖДУНАРОДНОЙ КОНВЕНЦИИ О СОЗДАНИИ МЕЖДУНАРОДНОГО ФОНДА ДЛЯ КОМПЕНСАЦИИ УЩЕРБА ОТ ЗАГРЯЗНЕНИЯ НЕФТЬЮ 1971 ГОДА

PROTOCOLO DE 1984 QUE ENMIENDA EL CONVENIO INTERNACIONAL SOBRE LA CONSTITUCION DE UN FONDO INTERNACIONAL DE INDEMNIZACION DE DAÑOS DEBIDOS A CONTAMINACION POR HIDROCARBUROS, 1971

PROTOCOL OF 1984 TO AMEND THE INTERNATIONAL CONVENTION ON THE ESTABLISHMENT OF AN INTERNATIONAL FUND FOR COMPENSATION FOR OIL POLLUTION DAMAGE, 1971

THE STATES PARTIES TO THE PRESENT PROTOCOL,

CONSIDERING that it is desirable to amend the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, done at Brussels on 18 December 1971, to provide for improved scope and enhanced compensation,

RECOGNIZING the advantage for the States Parties of arranging for the amended Convention to coexist with and be supplementary to the original Convention for a transitional period,

CONVINCED that the economic consequences of pollution damage resulting from the carriage of oil in bulk at sea by ships should continue to be shared by the shipping industry and by the oil cargo interests,

BEARING IN MIND the adoption of the Protocol of 1984 to amend the International Convention on Civil Liability for Oil Pollution Damage, 1969,

HAVE AGREED as follows:

Article 1

The Convention which the provisions of this Protocol amend is the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971, hereinafter referred to as the "1971 Fund Convention". For States Parties to the Protocol of 1976 to the 1971 Fund Convention, such reference shall be deemed to include the 1971 Fund Convention as amended by that Protocol.

Article 2

Article 1 of the 1971 Fund Convention is amended as follows:

1. Paragraph 1 is replaced by the following text:

   1. "1984 Liability Convention" means the International Convention on Civil Liability for Oil Pollution Damage, 1984.

2. After paragraph 1 a new paragraph is inserted as follows:

   1 bis. "1971 Fund Convention" means the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971. For States Parties to the Protocol of 1976 to that Convention, the term shall be deemed to include the 1971 Fund Convention as amended by that Protocol.

3. Paragraph 2 is replaced by the following text:

2. "Ship", "Person", "Owner", "Oil", "Pollution Damage", "Preventive Measures", "Incident", and "Organisation" have the same meaning as in Article I of the 1984 Liability Convention.

4. Paragraph 4 is replaced by the following text:

4. "Unit of account" has the same meaning as in Article V, paragraph 9, of the 1984 Liability Convention.

5. Paragraph 5 is replaced by the following text:

5. "Ship's tonnage" has the same meaning as in Article V, paragraph 10, of the 1984 Liability Convention.

6. Paragraph 7 is replaced by the following text:

7. "Guarantor" means any person providing insurance or other financial security to cover an owner's liability in pursuance of Article VII, paragraph 1, of the 1984 Liability Convention.

Article 3

Article 2 of the 1971 Fund Convention is amended as follows:

Paragraph 1 is replaced by the following text:

1. An International Fund for compensation for pollution damage, to be named "The International Oil Pollution Compensation Fund 1984" and hereinafter referred to as "the Fund", is hereby established with the following aims:

(a) to provide compensation for pollution damage to the extent that the protection afforded by the 1984 Liability Convention is inadequate;

(b) to give effect to the related purposes set out in this Convention.

Article 4

Article 3 of the 1971 Fund Convention is replaced by the following text:

This Convention shall apply exclusively:

(a) to pollution damage caused:

(i) in the territory, including the territorial sea, of a Contracting State, and

(ii) in the exclusive economic zone of a Contracting State, established in accordance with international law, or, if a Contracting State has not established such a zone, in an area beyond and adjacent to the territorial sea of that State determined by that State in

accordance with international law and extending not more than 200 nautical miles from the baselines from which the breadth of its territorial sea is measured;

(b) to preventive measures, wherever taken, to prevent or minimize such damage.

Article 5

The heading to Articles 4 to 9 of the 1971 Fund Convention is amended by deleting the words "and indemnification".

Article 6

Article 4 of the 1971 Fund Convention is amended as follows:

1. In paragraph 1 the five references to "the Liability Convention" are replaced by references to "the 1984 Liability Convention".

2. Paragraph 3 is replaced by the following text:

3. If the Fund proves that the pollution damage resulted wholly or partially either from an act or omission done with the intent to cause damage by the person who suffered the damage or from the negligence of that person, the Fund may be exonerated wholly or partially from its obligation to pay compensation to such person. The Fund shall in any event be exonerated to the extent that the shipowner may have been exonerated under Article III, paragraph 3, of the 1984 Liability Convention. However, there shall be no such exoneration of the Fund with regard to preventive measures.

3. Paragraph 4 is replaced by the following text:

4. (a) Except as otherwise provided in subparagraphs (b) and (c) of this paragraph, the aggregate amount of compensation payable by the Fund under this Article shall in respect of any one incident be limited, so that the total sum of that amount and the amount of compensation actually paid under the 1984 Liability Convention for pollution damage within the scope of application of this Convention as defined in Article 3 shall not exceed 135 million units of account.

(b) Except as otherwise provided in subparagraph (c), the aggregate amount of compensation payable by the Fund under this Article for pollution damage resulting from a natural phenomenon of an exceptional, inevitable and irresistible character shall not exceed 135 million units of account.

(c) The maximum amount of compensation referred to in subparagraphs (a) and (b) shall be 200 million units of account with respect to any

incident occurring during any period when there are three Parties to this Convention in respect of which the combined relevant quantity of contributing oil received by persons in the territories of such Parties, during the preceding calendar year, equalled or exceeded 600 million tons.

(d) Interest accrued on a fund constituted in accordance with Article V, paragraph 3, of the 1984 Liability Convention, if any, shall not be taken into account for the computation of the maximum compensation payable by the Fund under this Article.

(e) The amounts mentioned in this Article shall be converted into national currency on the basis of the value of that currency by reference to the Special Drawing Right on the date of the decision of the Assembly of the Fund as to the first date of payment of compensation.

4. Paragraph 5 is replaced by the following text:

5. Where the amount of established claims against the Fund exceeds the aggregate amount of compensation payable under paragraph 4, the amount available shall be distributed in such a manner that the proportion between any established claim and the amount of compensation actually recovered by the claimant under this Convention shall be the same for all claimants.

5. Paragraph 6 is replaced by the following text:

6. The Assembly of the Fund may decide that, in exceptional cases, compensation in accordance with this Convention can be paid even if the owner of the ship has not constituted a fund in accordance with Article V, paragraph 3, of the 1984 Liability Convention. In such case paragraph 4(e) of this Article applies accordingly.

Article 7

Article 5 of the 1971 Fund Convention is deleted.

Article 8

Article 6 of the 1971 Fund Convention is amended as follows:

1. In paragraph 1 the paragraph number and the words "or indemnification under Article 5" are deleted.

2. Paragraph 2 is deleted.

Article 9

Article 7 of the 1971 Fund Convention is amended as follows:

1. In paragraphs 1, 3, 4 and 6 the seven references to "the Liability Convention" are replaced by references to "the 1984 Liability Convention".

2. In paragraph 1 the words "or indemnification under Article 5" are deleted.

3. In the first sentence of paragraph 3 the words "or indemnification" and "or 5" are deleted.

4. In the second sentence of paragraph 3 the words "or under Article 5, paragraph 1," are deleted.

Article 10

In Article 8 of the 1971 Fund Convention the reference to "the Liability Convention" is replaced by a reference to "the 1984 Liability Convention".

Article 11

Article 9 of the 1971 Fund Convention is amended as follows:

1. Paragraph 1 is replaced by the following text:

> 1. The Fund shall, in respect of any amount of compensation for pollution damage paid by the Fund in accordance with Article 4, paragraph 1, of this Convention, acquire by subrogation the rights that the person so compensated may enjoy under the 1984 Liability Convention against the owner or his guarantor.

2. In paragraph 2 the words "or indemnification" are deleted.

Article 12

Article 10 of the 1971 Fund Convention is amended as follows:

> The opening phrase of paragraph 1 is replaced by the following text:
>
> Annual contributions to the Fund shall be made in respect of each Contracting State by any person who, in the calendar year referred to in Article 12, paragraphs 2(a) or (b), has received in total quantities exceeding 150,000 tons:

Article 13

Article 11 of the 1971 Fund Convention is deleted.

Article 14

Article 12 of the 1971 Fund Convention is amended as follows:

1. In the opening phrase of paragraph 1 the words "for each person referred to in Article 10" are deleted.

2. In paragraph 1(i), subparagraphs (b) and (c), the words "or 5" are deleted and the words "15 million francs" are replaced by the words "four million units of account".

3. The opening phrase in paragraph 2 is replaced by the following text:

The Assembly shall decide the total amount of contributions to be levied. On the basis of that decision, the Director shall, in respect of each Contracting State, calculate for each person referred to in Article 10 the amount of his annual contribution:

4. Paragraph 4 is replaced by the following text:

4. The annual contribution shall be due on the date to be laid down in the Internal Regulations of the Fund. The Assembly may decide on a different date of payment.

5. Paragraph 5 is replaced by the following text:

5. The Assembly may decide, under conditions to be laid down in the Financial Regulations of the Fund, to make transfers between funds received in accordance with Article 12.2(a) and funds received in accordance with Article 12.2(b).

6. Paragraph 6 is deleted.

Article 15

Article 13 of the 1971 Fund Convention is amended as follows:

1. Paragraph 1 is replaced by the following text:

1. The amount of any contribution due under Article 12 and which is in arrear shall bear interest at a rate which shall be determined in accordance with the Internal Regulations of the Fund, provided that different rates may be fixed for different circumstances.

2. In paragraph 3 the words "Articles 10 and 11" are replaced by the words "Articles 10 and 12" and the words "for a period exceeding three months" are deleted.

Article 16

A new paragraph 4 is added to Article 15 of the 1971 Fund Convention:

4. Where a Contracting State does not fulfil its obligations to submit to the Director the communication referred to in paragraph 2 and this results in a financial loss for the Fund, that Contracting State shall be liable to compensate the Fund for such loss. The Assembly shall, on the recommendation of the Director, decide whether such compensation shall be payable by a Contracting State.

Article 17

Article 16 of the 1971 Fund Convention is replaced by the following text:

The Fund shall have an Assembly and a Secretariat headed by a Director.

Article 18

Article 18 of the 1971 Fund Convention is amended as follows:

1. Paragraph 8 is deleted.

2. Paragraph 9 is replaced by the following text:

9. to establish any temporary or permanent subsidiary body it may consider to be necessary, to define its terms of reference and to give it the authority needed to perform the functions entrusted to it; when appointing the members of such body, the Assembly shall endeavour to secure an equitable geographical distribution of members and to ensure that the Contracting States, in respect of which the largest quantities of contributing oil are being received, are appropriately represented; the Rules of Procedure of the Assembly may be applied, mutatis mutandis, for the work of such subsidiary body;

3. In paragraph 10 the words ", the Executive Committee," are deleted.

4. In paragraph 11 the words ", the Executive Committee" are deleted.

5. Paragraph 12 is deleted.

Article 19

Article 19 of the 1971 Fund Convention is amended as follows:

1. Paragraph 1 is replaced by the following text:

1. Regular sessions of the Assembly shall take place once every calendar year upon convocation by the Director.

2. In paragraph 2 the words "of the Executive Committee or" are deleted.

Article 20

Articles 21 to 27 of the 1971 Fund Convention and the heading to these articles are deleted.

Article 21

Article 29 of the 1971 Fund Convention is amended as follows:

1. Paragraph 1 is replaced by the following text:

   1. The Director shall be the chief administrative officer of the Fund. Subject to the instructions given to him by the Assembly, he shall perform those functions which are assigned to him by this Convention, the Internal Regulations of the Fund and the Assembly.

2. In paragraph 2(e) the words "or the Executive Committee" are deleted.

3. In paragraph 2(f) the words "or to the Executive Committee, as the case may be," are deleted.

4. Paragraph 2(g) is replaced by the following text:

   (g) prepare, in consultation with the Chairman of the Assembly, and publish a report of the activities of the Fund during the previous calendar year;

5. In paragraph 2(h) the words ", the Executive Committee" are deleted.

Article 22

In Article 31, paragraph 1, of the 1971 Fund Convention, the words "on the Executive Committee and" are deleted.

Article 23

Article 32 of the 1971 Fund Convention is amended as follows:

1. In the opening phrase the words "and the Executive Committee" are deleted.

2. In subparagraph (b) the words "and the Executive Committee" are deleted.

Article 24

Article 33 of the 1971 Fund Convention is amended as follows:

1. Paragraph 1 is deleted.

2. In paragraph 2 the paragraph number is deleted.

3. Subparagraph (c) is replaced by the following text:

   (c) the establishment of subsidiary bodies, under Article 18, paragraph 9, and matters relating to such establishment.

Article 25

Article 35 of the 1971 Fund Convention is replaced by the following text:

Claims for compensation under Article 4 arising from incidents occurring after the date of entry into force of this Convention may not be brought against the Fund earlier than the one hundred and twentieth day after that date.

Article 26

After Article 36 of the 1971 Fund Convention three new articles are inserted as follows:

Article 36 bis

The following transitional provisions shall apply in the period, hereinafter referred to as the transitional period, commencing with the date of entry into force of this Convention and ending with the date on which the denunciations provided for in Article 31 of the Protocol of 1984 to amend the 1971 Fund Convention take effect:

(a) In the application of paragraph 1(a) of Article 2 of this Convention, the reference to the 1984 Liability Convention shall include reference to the International Convention on Civil Liability for Oil Pollution Damage, 1969, either in its original version or as amended by the Protocol thereto of 1976 (referred to in this Article as "the 1969 Liability Convention"), and also the 1971 Fund Convention.

(b) Where an incident has caused pollution damage within the scope of this Convention, the Fund shall pay compensation to any person suffering pollution damage only if, and to the extent that, such person has been unable to obtain full and adequate compensation for the damage under the terms of the 1969 Liability Convention, the 1971 Fund Convention and the 1984 Liability Convention, provided that, in respect of pollution damage within the scope of this Convention in respect of a Party to this Convention but not a Party to the 1971 Fund Convention, the Fund shall pay compensation to any person suffering pollution damage only if, and to the extent that, such person would have been unable to obtain full and adequate compensation had that State been party to each of the above-mentioned Conventions.

(c) In the application of Article 4 of this Convention, the amount to be taken into account in determining the aggregate amount of compensation payable by the Fund shall also include the amount of compensation actually paid under the 1969 Liability Convention, if any, and the amount of compensation actually paid or deemed to have been paid under the 1971 Fund Convention.

(d) Paragraph 1 of Article 9 of this Convention shall also apply to the rights enjoyed under the 1969 Liability Convention.

Article 36 ter

Notwithstanding the provisions of this Convention, the following provisions shall apply to the administration of the Fund during the period in which both the 1971 Fund Convention and this Convention are in force:

(a) The Secretariat of the Fund, established by the 1971 Fund Convention (hereinafter referred to as "the 1971 Fund"), headed by the Director, may also function as the Secretariat and the Director of the Fund.

(b) If, in accordance with subparagraph (a), the Secretariat and the Director of the 1971 Fund also perform the function of Secretariat and Director of the Fund, the Fund shall be represented, in cases of conflict of interests between the 1971 Fund and the Fund, by the Chairman of the Assembly of the Fund.

(c) The Director and the staff and experts appointed by him, performing their duties under this Convention and the 1971 Fund Convention, shall not be regarded as contravening the provisions of Article 30 of this Convention in so far as they discharge their duties in accordance with this Article.

(d) The Assembly of the Fund shall endeavour not to take decisions which are incompatible with decisions taken by the Assembly of the 1971 Fund. If differences of opinion with respect to common administrative issues arise, the Assembly of the Fund shall try to reach a consensus with the Assembly of the 1971 Fund, in a spirit of mutual co-operation and with the common aims of both Organisations in mind.

(e) The Fund may succeed to the rights, obligations and assets of the 1971 Fund if the Assembly of the 1971 Fund so decides, in accordance with Article 44, paragraph 2, of the 1971 Fund Convention.

(f) The Fund shall reimburse to the 1971 Fund all costs and expenses arising from administrative services performed by the 1971 Fund on behalf of the Fund.

Article 36 quater

Final clauses

The final clauses of this Convention shall be Articles 28 to 39 of the Protocol of 1984 to amend the 1971 Fund Convention. References in this Convention to Contracting States shall be taken to mean references to the Contracting States of that Protocol.

Article 37

1. The 1971 Fund Convention and this Protocol shall, as between the Parties to this Protocol, be read and interpreted together as one single instrument.

2. Articles 1 to 36 quater of the 1971 Fund Convention as amended by this Protocol shall be known as the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1984 (1984 Fund Convention).

FINAL CLAUSES

Article 28

Signature, ratification, etc.

1. This Protocol shall be open for signature at London from 1 December 1984 to 30 November 1985 by any State which has signed the 1984 Liability Convention.

2. Subject to paragraph 4, this Protocol shall be ratified, accepted or approved by States which have signed it.

3. Subject to paragraph 4, this Protocol is open for accession by States which did not sign it.

4. This Protocol may be ratified, accepted, approved or acceded to, only by States which have ratified, accepted, approved or acceded to the 1984 Liability Convention.

5. Ratification, acceptance, approval or accession shall be effected by the deposit of a formal instrument to that effect with the Secretary-General of the Organization.

6. A State which is a Party to this Protocol but is not a Party to the 1971 Fund Convention shall be bound by the provisions of the 1971 Fund Convention as amended by this Protocol in relation to other Parties hereto, but shall not be bound by the provisions of the 1971 Fund Convention in relation to Parties thereto.

7. Any instrument of ratification, acceptance, approval or accession deposited after the entry into force of an amendment to the 1971 Fund Convention as amended by this Protocol shall be deemed to apply to the Convention so amended, as modified by such amendment.

Article 29

Information on contributing oil

1. Before this Protocol comes into force for a State, that State shall, when depositing an instrument referred to in Article 28, paragraph 5, and annually thereafter at a date to be determined by the Secretary-General of the Organization, communicate to him the name and address of any person who in respect of that State would be liable to contribute to the Fund pursuant to Article 10 of the 1971 Fund Convention as amended by this Protocol as well as data on the relevant quantities of contributing oil received by any such person in the territory of that State during the preceding calendar year.

2. During the transitional period, the Director shall, for Parties, communicate annually to the Secretary-General of the Organization data on quantities of contributing oil received by persons liable to contribute to the Fund pursuant to Article 10 of the 1971 Fund Convention as amended by this Protocol.

Article 30

Entry into force

1. This Protocol shall enter into force twelve months following the date on which the following requirements are fulfilled:

(a) at least eight States have deposited instruments of ratification, acceptance, approval or accession with the Secretary-General of the Organization; and

(b) the Secretary-General of the Organization has received information in accordance with Article 29 that those persons who would be liable to contribute pursuant to Article 10 of the 1971 Fund Convention as amended by this Protocol have received during the preceding calendar year a total quantity of at least 600 million tons of contributing oil.

2. However, this Protocol shall not enter into force before the 1984 Liability Convention has entered into force.

3. For each State which ratifies, accepts, approves or accedes to this Protocol after the conditions in paragraph 1 for entry into force have been met, the Protocol shall enter into force twelve months following the date of the deposit by such State of the appropriate instrument.

4. Any State may, at the time of the deposit of its instrument of ratification, acceptance, approval or accession in respect of this Protocol declare that such instrument shall not take effect for the purpose of this Article until the end of the six-month period in Article 31.

5. Any State which has made a declaration in accordance with the preceding paragraph may withdraw it at any time by means of a notification addressed to the Secretary-General of the Organization. Any such withdrawal shall take effect on the date the notification is received, and any State making such a withdrawal shall be deemed to have deposited its instrument of ratification, acceptance, approval or accession in respect of this Protocol on that date.

6. Any State which has made a declaration under Article 13, paragraph 2, of the Protocol of 1984 to amend the 1969 Liability Convention shall be deemed to have also made a declaration under paragraph 4 of this Article. Withdrawal of a declaration under the said Article 13, paragraph 2, shall be deemed to constitute withdrawal also under paragraph 5 of this Article.

Article 31

Denunciation of 1969 and 1971 Conventions

Subject to Article 30, within six months following the date on which the following requirements are fulfilled:

(a) at least eight States have become Parties to this Protocol or have deposited instruments of ratification, acceptance, approval or accession with the Secretary-General of the Organization, whether or not subject to Article 30, paragraph 4, and

(b) the Secretary-General of the Organization has received information in accordance with Article 29 that those persons who are or would be liable to contribute pursuant to Article 10 of the 1971 Fund Convention as amended by this Protocol have received during the preceding calendar year a total quantity of at least 750 million tons of contributing oil;

each Party to this Protocol and each State which has deposited an instrument of ratification, acceptance, approval or accession, whether or not subject to Article 30, paragraph 4, shall, if party thereto, denounce the 1971 Fund Convention and the 1969 Liability Convention with effect twelve months after the expiry of the above-mentioned six-month period.

Article 32

Revision and amendment

1. A conference for the purpose of revising or amending the 1984 Fund Convention may be convened by the Organization.

2. The Organization shall convene a Conference of Contracting States for the purpose of revising or amending the 1984 Fund Convention at the request of not less than one-third of all Contracting States.

Article 33

Amendment of compensation limits

1. Upon the request of at least one-quarter of the Contracting States, any proposal to amend the limits of amounts of compensation laid down in Article 4, paragraph 4, of the Convention as amended by this Protocol shall be circulated by the Secretary-General to all Members of the Organization and to all Contracting States.

2. Any amendment proposed and circulated as above shall be submitted to the Legal Committee of the Organization for consideration at a date at least six months after the date of its circulation.

3. All Contracting States to the Convention as amended by this Protocol, whether or not Members of the Organization, shall be entitled to participate in the proceedings of the Legal Committee for the consideration and adoption of amendments.

4. Amendments shall be adopted by a two-thirds majority of the Contracting States present and voting in the Legal Committee, expanded as provided for in paragraph 3, on condition that at least one-half of the Contracting States shall be present at the time of voting.

5. When acting on a proposal to amend the limits, the Committee shall take into account the experience of incidents and in particular the amount of damage resulting therefrom and changes in the monetary values. It shall also take into account the relationship between the limits in Article 4, paragraph 4, of the Convention as amended by this Protocol and those in Article V, paragraph 1 of the International Convention on Civil Liability for Oil Pollution Damage, 1984.

6. (a) No amendment of the limits under this Article may be considered less than five years from the date on which this Protocol was opened for signature nor less than five years from the date of entry into force of a previous amendment under this Article. No amendment under this Article shall be considered before this Protocol has entered into force.

(b) No limit may be increased so as to exceed an amount which corresponds to the limit laid down in the Convention as amended by this Protocol increased by six per cent per year calculated on a compound basis from the date on which this Protocol was opened for signature.

(c) No limit may be increased so as to exceed an amount which corresponds to the limit laid down in the Convention as amended by this Protocol multiplied by three.

7. Any amendment adopted in accordance with paragraph 4 shall be notified by the Organization to all Contracting States. The amendment shall be deemed to have been accepted at the end of a period of eighteen months after the date of notification unless within that period not less than one-quarter of the States that were Contracting States at the time of the adoption of the amendment by the Committee have communicated to the Organization that they do not accept the amendment in which case the amendment is rejected and shall have no effect.

8. An amendment deemed to have been accepted in accordance with paragraph 7 shall enter into force eighteen months after its acceptance.

9. All Contracting States shall be bound by the amendment, unless they denounce this Protocol in accordance with Article 34, paragraphs 1 and 2, at least six months before the amendment enters into force. Such denunciation shall take effect when the amendment enters into force.

10. When an amendment has been adopted by the Committee but the eighteen-month period for its acceptance has not yet expired, a State which becomes a Contracting State during that period shall be bound by the amendment if it enters into force. A State which becomes a Contracting State after that period shall be bound by an amendment which has been accepted in accordance with paragraph 7. In the cases referred to in this paragraph, a State becomes bound by an amendment when that amendment enters into force, or when this Protocol enters into force for that State, if later.

Article 34

Denunciation

1. This Protocol may be denounced by any Party at any time after the date on which it enters into force for that Party.

2. Denunciation shall be effected by the deposit of an instrument with the Secretary-General of the Organization.

3. A denunciation shall take effect twelve months, or such longer period as may be specified in the instrument of denunciation, after its deposit with the Secretary-General of the Organization.

4. Denunciation of the 1984 Liability Convention shall be deemed to be a denunciation of this Protocol. Such denunciation shall take effect on the date on which denunciation of the Protocol of 1984 to the 1969 Liability Convention takes effect according to Article 16 of that Protocol.

5. Any Contracting State to this Protocol which has not denounced the 1971 Fund Convention and the 1969 Liability Convention as required by Article 31 shall be deemed to have denounced this Protocol with effect twelve months after the expiry of the six month period in that Article. As from the date on which the denunciations provided for in Article 31 take effect, any Party to this Protocol which deposits an instrument of ratification, acceptance, approval or accession to the 1969 Liability Convention shall be deemed to have denounced this Protocol with effect from the date on which such instrument takes effect.

6. As between the Parties to this Protocol, denunciation by any of them of the 1971 Fund Convention in accordance with Article 41 thereof shall not be construed in any way as a denunciation of the 1971 Fund Convention as amended by this Protocol.

7. Notwithstanding a denunciation of this Protocol by a Party pursuant to this Article, any provisions of this Protocol relating to the obligations to make contributions under Article 10 of the 1971 Fund Convention as amended by this Protocol with respect to an incident referred to in Article 12, paragraph 2(b), of that amended Convention and occurring before the denunciation takes effect shall continue to apply.

Article 35

Extraordinary sessions of the Assembly

1. Any Contracting State may, within ninety days after the deposit of an instrument of denunciation the result of which it considers will significantly increase the level of contributions for the remaining Contracting States, request the Director to convene an extraordinary session of the Assembly. The Director shall convene the Assembly to meet not later than sixty days after receipt of the request.

2. The Director may convene, on his own initiative, an extraordinary session of the Assembly to meet within sixty days after the deposit of any instrument of denunciation, if he considers that such denunciation will result in a significant increase in the level of contributions of the remaining Contracting States.

3. If the Assembly at an extraordinary session convened in accordance with paragraph 1 or 2 decides that the denunciation will result in a significant increase in the level of contributions for the remaining Contracting States, any such State may, not later than one hundred and twenty days before the date on which the denunciation takes effect, denounce this Protocol with effect from the same date.

Article 36

Cessation

1. This Protocol shall cease to be in force on the date when the number of Contracting States falls below three.

2. States which are bound by this Protocol on the day before the date it ceases to be in force shall enable the Fund to exercise its functions as described under Article 37 of this Protocol and shall, for that purpose only, remain bound by this Protocol.

Article 37

Winding up of the Fund

1. If this Protocol ceases to be in force, the Fund shall nevertheless:

(a) meet its obligations in respect of any incident occurring before the Protocol ceased to be in force;

(b) be entitled to exercise its rights to contributions to the extent that these contributions are necessary to meet the obligations under subparagraph (a), including expenses for the administration of the Fund necessary for this purpose.

2. The Assembly shall take all appropriate measures to complete the winding up of the Fund including the distribution in an equitable manner of any remaining assets among those persons who have contributed to the Fund.

3. For the purposes of this Article the Fund shall remain a legal person.

Article 38

Depositary

1. This Protocol and any amendments accepted under Article 33 shall be deposited with the Secretary-General of the Organisation.

2. The Secretary-General of the Organisation shall:

(a) inform all States which have signed or acceded to this Protocol of:

(i) each new signature or deposit of an instrument together with the date thereof;

(ii) each declaration and notification under Article 30 including declarations and withdrawals deemed to have been made in accordance with that Article;

(iii) the date of entry into force of this Protocol;

(iv) the date by which denunciations provided for in Article 31 are required to be made;

(v) any proposal to amend limits of amounts of compensation which has been made in accordance with Article 33, paragraph 1;

(vi) any amendment which has been adopted in accordance with Article 33, paragraph 4;

(vii) any amendment deemed to have been accepted under Article 33, paragraph 7, together with the date on which that amendment shall enter into force in accordance with paragraphs 8 and 9 of that Article;

(viii) the deposit of an instrument of denunciation of this Protocol together with the date of the deposit and the date on which it takes effect;

(ix) any denunciation deemed to have been made under Article 34, paragraph 5;

(x) any communication called for by any Article in this Protocol;

(b) transmit certified true copies of this Protocol to all Signatory States and to all States which accede to the Protocol.

3. As soon as this Protocol enters into force, the text shall be transmitted by the Secretary-General of the Organization to the Secretariat of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations.

Article 19

Languages

This Protocol is established in a single original in the Arabic, Chinese, English, French, Russian and Spanish languages, each text being equally authentic.

DONE AT LONDON this twenty-fifth day of May one thousand nine hundred and eighty-four.

IN WITNESS WHEREOF the undersigned being duly authorized for that purpose have signed this Protocol.

ة نسخة معدقة لبروتوكـــول عام ١٩٨٤ لتعديل الاتفاقية الدولية
نشاء صندوق دولـي للتعويض عن الاضرار الناجمة عن التلوث النفطي
عام ١٩٧١، الذي تم في لندن في ٢٥ مايو/آيار ١٩٨٤، حيث الاصـل
يودع لدى الامين العام للمنظمة البحرية الدولية.

此件系1984年5月25日在伦敦签订的修正1971年设立国际油污损害赔偿基金国际公
1984年议定书的核证无误的副本。原本存放在国际海事组织秘书处。

Certified true copy of the Protocol of 1984 to Amend the International Convent on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971, done at London on 25 May 1984, the original of which is deposited with the Secretary-General of the International Maritime Organization.

Copie certifiée conforme du Protocole de 1984 modifiant la Convention internationale de 1971 portant création d'un Fonds international d'indemnisation pour les dommages dus à la pollution par les hydrocarbures, fait à Londres le 25 mai 1984, dont le texte original est déposé auprès du Secrétaire général de l'Organisation maritime internationale.

Заверенная подлинная копия Протокола 1984 года об изменении Международной конвенции о создании Международного фонда для компенсации ущерба от загрязнения нефтью 1971 года, совершенного в Лондоне 25 мая 1984 года, оригинал которого сдается на хранение Генеральному секретарю Международной морской организации.

Copia auténtica certificada del Protocolo de 1984 destinado a enmendar el Convenio internacional sobre la constitución de un fondo internacional de indemnización de daños debidos a contaminación por hidrocarburos, 1971, hecho en Londres el 25 de mayo de 1984, cuyo original se ha depositado ante el Secretario General de la Organización Marítima Internacional.

ة عن الامين العام للمنظمة البحرية الدولية :

代表国际海事组织秘书长：

For the Secretary-General of the International Maritime Organization:

Pour le Secrétaire général de l'Organisation maritime internationale :

За Генерального секретаря Международной морской организации:

Por el Secretario General de la Organización Marítima Internacional:

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